
SUBSTITUTE SENATE BILL 6433

State of Washington

60th Legislature

2008 Regular Session

By Senate Labor, Commerce, Research & Development (originally sponsored by Senators Murray, Kohl-Welles, Keiser, Franklin, and King)

READ FIRST TIME 02/07/08.

1 AN ACT Relating to making technical changes to laws relating to
2 labor regulations; amending RCW 49.04.040, 49.04.110, 49.04.120,
3 49.04.130, 49.08.010, 49.08.020, 49.08.030, 49.08.040, 49.08.050,
4 49.12.005, 49.12.041, 49.12.050, 49.12.091, 49.12.101, 49.12.105,
5 49.12.110, 49.12.121, 49.12.123, 49.12.130, 49.12.150, 49.12.170,
6 49.12.175, 49.12.185, 49.12.200, 49.12.250, 49.12.275, 49.12.290,
7 49.12.380, 49.12.450, 49.17.020, 49.17.030, 49.17.040, 49.17.041,
8 49.17.050, 49.17.055, 49.17.060, 49.17.070, 49.17.080, 49.17.090,
9 49.17.100, 49.17.110, 49.17.120, 49.17.130, 49.17.140, 49.17.150,
10 49.17.160, 49.17.170, 49.17.180, 49.17.190, 49.17.200, 49.17.210,
11 49.17.220, 49.17.230, 49.17.240, 49.17.250, 49.17.260, 49.17.270,
12 49.17.280, 49.17.285, 49.17.300, 49.17.320, 49.17.350, 49.19.020,
13 49.19.030, 49.19.040, 49.22.010, 49.22.020, 49.24.010, 49.24.020,
14 49.24.040, 49.24.060, 49.24.070, 49.24.080, 49.24.150, 49.24.170,
15 49.24.180, 49.24.190, 49.24.220, 49.24.230, 49.24.250, 49.24.260,
16 49.24.290, 49.24.310, 49.24.320, 49.24.330, 49.24.340, 49.24.370,
17 49.26.010, 49.26.013, 49.26.016, 49.26.020, 49.26.030, 49.26.040,
18 49.26.110, 49.26.115, 49.26.125, 49.26.130, 49.28.010, 49.28.040,
19 49.28.060, 49.28.065, 49.28.100, 49.28.120, 49.32.020, 49.32.030,
20 49.32.050, 49.32.090, 49.32.110, 49.36.015, 49.38.010, 49.40.010,
21 49.40.030, 49.40.040, 49.40.050, 49.40.060, 49.44.010, 49.44.020,

1 49.44.030, 49.44.040, 49.44.050, 49.44.060, 49.44.080, 49.44.090,
2 49.44.100, 49.44.140, 49.46.020, 49.46.040, 49.46.060, 49.46.070,
3 49.46.080, 49.46.090, 49.46.100, 49.46.110, 49.46.130, 49.48.010,
4 49.48.030, 49.48.060, 49.48.070, 49.48.150, 49.48.210, 49.52.010,
5 49.52.020, 49.52.030, 49.52.040, 49.52.050, 49.52.060, 49.52.070,
6 49.52.080, 49.52.090, 49.56.010, 49.56.020, 49.56.030, 49.56.040,
7 49.60.174, 49.60.178, 49.60.310, 49.60.360, 49.60.380, 49.64.030,
8 49.64.040, 49.66.020, 49.66.030, 49.66.040, 49.66.050, 49.66.060,
9 49.66.070, 49.66.080, 49.66.090, 49.66.100, 49.66.120, 49.66.900,
10 49.70.170, 49.70.210, and 49.74.005; reenacting and amending RCW
11 49.12.187 and 49.60.250; repealing RCW 49.04.141, 49.08.060, 49.17.288,
12 49.32.072, 49.32.073, 49.32.074, and 49.32.910; and prescribing
13 penalties.

14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

15 **Sec. 1.** RCW 49.04.040 and 2001 c 204 s 3 are each amended to read
16 as follows:

17 (~~Upon July 22, 2001,~~) (1) All newly approved apprenticeship
18 programs must be represented by either a unilateral or joint
19 apprenticeship committee. Apprenticeship committees must conform to
20 this chapter, the rules adopted by the apprenticeship council, and 29
21 C.F.R. Part 29 and must be approved by the apprenticeship council.
22 Apprenticeship committees may be approved whenever the apprentice
23 training needs justify such establishment. Such apprenticeship
24 committees shall be composed of an equal number of employer and
25 employee representatives who may be chosen:

26 (~~(1)~~) (a) From names submitted by the respective local or state
27 employer and employee organizations served by the apprenticeship
28 committee; or

29 (~~(2)~~) (b) In a manner which selects representatives of management
30 and nonmanagement served by the apprenticeship committee. The council
31 may act as the apprentice representative when the council determines
32 there is no feasible method to choose nonmanagement representatives.

33 (2) Apprenticeship committees shall devise standards for
34 apprenticeship programs and operate such programs in accordance with
35 the standards established by this chapter and by council-adopted rules.

1 The council and supervisor may provide aid and technical assistance to
2 apprenticeship program sponsors and applicants, or potential
3 applicants.

4 **Sec. 2.** RCW 49.04.110 and 1990 c 72 s 2 are each amended to read
5 as follows:

6 When (~~it shall appear to~~) the department of labor and industries
7 determines that any apprenticeship program referred to in RCW 49.04.100
8 has failed to comply with the woman or racial minority representation
9 requirement (~~hereinabove in such section referred to by January 1,~~
10 ~~1970, which fact shall be determined by reports the department may~~
11 ~~request or in such other manner as it shall see fit, then the same~~
12 ~~shall be deemed prima facie evidence of noncompliance with~~) under RCW
13 49.04.100 through 49.04.130 (~~and thereafter~~), no state funds or
14 facilities shall be expended upon (~~such~~) the program(~~PROVIDED,~~
15 ~~That prior to such withdrawal of funds evidence shall be received and~~
16 ~~state funds or facilities shall not be denied if there is a showing~~
17 ~~of~~). However, before funds are withdrawn, the apprenticeship program
18 may submit evidence that demonstrates a genuine effort to comply with
19 the (~~provisions~~) woman and racial minority representation requirement
20 of RCW 49.04.100 through 49.04.130 (~~as to entrance of women and racial~~
21 ~~minorities into the program~~). The director shall notify the
22 appropriate federal authorities if there is noncompliance with the
23 woman and racial minority representation (~~qualification~~) requirement
24 under any apprenticeship program as provided for in RCW 49.04.100
25 through 49.04.130.

26 **Sec. 3.** RCW 49.04.120 and 1990 c 72 s 3 are each amended to read
27 as follows:

28 Every community college, vocational school, or high school
29 (~~carrying on a program of~~) with a vocational education program shall
30 make every effort to enlist woman and racial minority representation in
31 the apprenticeship programs within the state and (~~are authorized to~~
32 ~~carry out such purpose in such ways as they shall see fit~~) may take
33 appropriate action to do so.

34 **Sec. 4.** RCW 49.04.130 and 1990 c 72 s 4 are each amended to read
35 as follows:

1 Every employer and employee organization as well as the
2 apprenticeship council and local and state apprenticeship committees
3 and vocational schools shall make every effort to enlist woman and
4 racial minority representation in the apprenticeship programs of the
5 state and shall be aided (~~(therein)~~) by the department of labor and
6 industries (~~(insofar as such department may be able to so do without~~
7 ~~undue interference)~~) if this aid does not unduly interfere with its
8 other powers and duties. In addition, the legislature, in fulfillment
9 of the public welfare, mandates those involved in apprenticeship
10 training with the responsibility of making every effort to see that
11 woman and racial minority representatives in such programs pursue the
12 same to a successful conclusion.

13 **Sec. 5.** RCW 49.08.010 and 1975 1st ex.s. c 296 s 36 are each
14 amended to read as follows:

15 (~~(It shall be the duty of the chairman)~~) The chair of the public
16 employment relations commission must, upon application of any employer
17 or employee having differences, (~~(as soon as practicable, to visit the~~
18 ~~location of such differences and to make a careful inquiry into)~~)
19 investigate the cause (~~(thereof and to)~~) of the dispute and advise the
20 (~~(respective)~~) parties, what, if anything, ought to be done (~~(or~~
21 ~~submitted to by both to adjust said)~~) to settle the dispute (~~(and~~
22 ~~should said parties then still)~~). If the employer and employee fail to
23 agree to a settlement (~~(through said chairman, then said chairman shall~~
24 ~~endeavor to have said)~~), the chair must request that the parties
25 (~~(consent in writing to)~~) submit their differences to a board of
26 arbitration(~~(s)~~) to be chosen (~~(from citizens of the state)~~) as
27 follows(~~(, to wit: Said employer shall appoint one and said employees~~
28 ~~acting through a majority, one, and these two shall select a third,~~
29 ~~these three to constitute the board of arbitration and)~~): One member
30 must be appointed by the employer; one member must be appointed by the
31 employee or employee group; and one member must be appointed jointly by
32 the other board members. The findings of (~~(said)~~) the board of
33 arbitration (~~(to be)~~) are final.

34 **Sec. 6.** RCW 49.08.020 and 1975 1st ex.s. c 296 s 37 are each
35 amended to read as follows:

36 (~~(The proceedings of said board of arbitration shall be held~~

1 before)) The ((chairman)) chair of the public employment relations
2 commission ((who)) shall act as ((moderator or chairman, without the
3 ~~privilege of voting, and who shall~~) chair of the board of arbitration
4 but not vote in proceedings before the board. The chair must keep a
5 record of the proceedings, issue subpoenas, and administer oaths to the
6 members of ((said)) the board((,)) and any ((witness said board may
7 ~~deem necessary to summon~~) witnesses before the board.

8 **Sec. 7.** RCW 49.08.030 and 1903 c 58 s 3 are each amended to read
9 as follows:

10 ((Any)) Notice or process issued by the board ((herein created,))
11 of arbitration shall be served ((by any sheriff, coroner or constable
12 to whom the same may be directed, or in whose hands the same may be
13 placed for service)) in the manner described in chapter 4.28 RCW.

14 **Sec. 8.** RCW 49.08.040 and 1975-'76 2nd ex.s. c 34 s 144 are each
15 amended to read as follows:

16 ((Such)) Arbitrators shall receive five dollars per day for each
17 day ((actually)) engaged in ((such)) arbitration and travel expenses in
18 accordance with RCW 43.03.050 and 43.03.060 ((as now existing or
19 hereafter amended)) to be paid ((upon certificates of the director of
20 labor and industries out of the fund appropriated for the purpose or at
21 the disposal of)) by the department of labor and industries
22 ((applicable to such expenditure)).

23 **Sec. 9.** RCW 49.08.050 and 1903 c 58 s 5 are each amended to read
24 as follows:

25 ((Upon the failure of the director of labor and industries, in any
26 case, to secure the creation of a board of arbitration, it shall become
27 his duty to)) If a board of arbitration is not established, the
28 director of the department of labor and industries must request a sworn
29 statement from each party to the dispute of the facts upon which their
30 dispute and their reasons for not submitting the ((same)) dispute to
31 arbitration are based. Any sworn statement made to the director of
32 labor and industries under this ((provision shall be for public use and
33 shall be given publicly in such newspapers as desire to use it))
34 section is subject to public disclosure.

1 **Sec. 10.** RCW 49.12.005 and 2003 c 401 s 2 are each amended to read
2 as follows:

3 (~~For the purposes of this chapter:~~) The definitions in this
4 section apply throughout this chapter unless the context clearly
5 requires otherwise.

6 (1) "Department" means the department of labor and industries.

7 (2) "Director" means the director of the department of labor and
8 industries, or the director's designated representative.

9 (3)(a) Before May 20, 2003, "employer" means any person, firm,
10 corporation, partnership, business trust, legal representative, or
11 other business entity which engages in any business, industry,
12 profession, or activity in this state and employs one or more employees
13 but does not include the state, any state institution, any state
14 agency, political subdivision of the state, or any municipal
15 corporation or quasi-municipal corporation. However, for the purposes
16 of RCW 49.12.265 through 49.12.295, 49.12.350 through 49.12.370,
17 49.12.450, and 49.12.460 only, "employer" also includes the state, any
18 state institution, any state agency, political subdivisions of the
19 state, and any municipal corporation or quasi-municipal corporation.

20 (b) On and after May 20, 2003, "employer" means any person, firm,
21 corporation, partnership, business trust, legal representative, or
22 other business entity which engages in any business, industry,
23 profession, or activity in this state and employs one or more
24 employees, and includes the state, any state institution, state agency,
25 political subdivisions of the state, and any municipal corporation or
26 quasi-municipal corporation. However, this chapter and the rules
27 adopted thereunder apply to these public employers only to the extent
28 that this chapter and the rules adopted thereunder do not conflict
29 with: (i) Any state statute or rule; and (ii) respect to political
30 subdivisions of the state and any municipal or quasi-municipal
31 corporation, any local resolution, ordinance, or rule adopted under the
32 authority of the local legislative authority before April 1, 2003.

33 (4) "Employee" means an employee who is employed in the business of
34 the employee's employer whether by way of manual labor or otherwise.

35 (5) "Conditions of labor" means and includes the conditions of rest
36 and meal periods for employees including provisions for personal
37 privacy, practices, methods and means by or through which labor or
38 services are performed by employees and includes bona fide physical

1 qualifications in employment, but shall not include conditions of labor
2 otherwise governed by statutes and rules and regulations relating to
3 industrial safety and health administered by the department.

4 (6) ~~((For the purpose of chapter 16, Laws of 1973 2nd ex. sess. a))~~
5 "Minor" ~~((is defined to be))~~ means a person ~~((of either sex))~~ under the
6 age of eighteen years.

7 **Sec. 11.** RCW 49.12.041 and 1994 c 164 s 14 are each amended to
8 read as follows:

9 ~~((It shall be the responsibility of))~~ The director ~~((to))~~ must
10 investigate the wages, hours, and conditions of employment of all
11 employees, including minors ~~((, except as may otherwise be provided in~~
12 ~~chapter 16, Laws of 1973 2nd ex. sess))~~. The director, or the
13 director's authorized representative, ~~((shall have full authority to))~~
14 may require statements from all employers, relative to wages, hours,
15 and working conditions and ~~((to))~~ may inspect the books, records, and
16 physical facilities of all employers subject to ~~((chapter 16, Laws of~~
17 ~~1973 2nd ex. sess))~~ this chapter. Such examinations shall take place
18 within normal working hours, within reasonable limits, and in a
19 reasonable manner.

20 **Sec. 12.** RCW 49.12.050 and 1994 c 164 s 15 are each amended to
21 read as follows:

22 Every employer ~~((shall))~~ must keep a record of the names of all
23 employees employed by him or her, and ~~((shall on request))~~ must permit
24 the director to inspect ~~((such))~~ this record upon request.

25 **Sec. 13.** RCW 49.12.091 and 1994 c 164 s 16 are each amended to
26 read as follows:

27 After an investigation has been conducted by the department of
28 wages, hours, and conditions of labor ~~((subject to chapter 16, Laws of~~
29 ~~1973 2nd ex. sess.))~~, the director ~~((shall))~~ must be furnished with all
30 information relative to ~~((such))~~ the investigation ~~((of wages, hours~~
31 ~~and working conditions))~~, including current statistics on wage rates in
32 all occupations subject to ~~((the provisions of chapter 16, Laws of 1973~~
33 ~~2nd ex. sess))~~ this chapter. Within a reasonable time thereafter, if
34 the director finds that in any occupation, trade, or industry,
35 ~~((subject to chapter 16, Laws of 1973 2nd ex. sess.))~~ the wages paid

1 to employees are inadequate to supply the necessary cost of living, but
2 not to exceed the state minimum wage as prescribed in RCW 49.46.020,
3 (~~as now or hereafter amended,~~) or that the conditions of labor are
4 detrimental to the health of employees, the director (~~shall have~~
5 ~~authority to prescribe~~) may adopt rules (~~and regulations~~) for the
6 purpose of adopting minimum wages for occupations not otherwise
7 governed by minimum wage requirements fixed by state or federal
8 statute, or a rule or regulation adopted under such statute(~~, and, at~~
9 ~~the same time have the authority to prescribe~~). The director may also
10 adopt rules (~~and regulations~~) fixing standards, conditions, and hours
11 of labor for the protection of the safety, health, and welfare of
12 employees for (~~all or specified~~) occupations subject to (~~chapter 16,~~
13 ~~Laws of 1973 2nd ex. sess. Thereafter, the director shall conduct a~~
14 ~~public hearing in accordance with the procedures of the administrative~~
15 ~~procedure act, chapter 34.05 RCW, for the purpose of the adoption of~~
16 ~~rules and regulations fixing minimum wages and standards, conditions~~
17 ~~and hours of labor subject to the provisions of chapter 16, Laws of~~
18 ~~1973 2nd ex. sess~~) this chapter. After (~~such~~) the rules (~~become~~
19 ~~effective~~) take effect, copies (~~thereof shall~~) must be supplied to
20 employers who may be affected by (~~such~~) the rules and (~~such~~) these
21 employers (~~shall~~) must post (~~such~~) the rules, (~~where possible, in~~
22 ~~such~~) in a place or places(~~,~~) that are reasonably accessible to all
23 employees of (~~such~~) the employer. After the effective date of
24 (~~such~~) the rules, it shall be unlawful for any employer in any
25 occupation subject to this chapter (~~(16, Laws of 1973 2nd ex. sess.)~~)
26 to employ any person for less than the rate of wages specified in
27 (~~such~~) the rules or under conditions and hours of labor prohibited
28 for any occupation specified in (~~such~~) the rules(~~(:—PROVIDED,~~
29 ~~That)~~). This section (~~shall~~) does not apply to sheltered workshops.

30 **Sec. 14.** RCW 49.12.101 and 1994 c 164 s 17 are each amended to
31 read as follows:

32 Whenever wages, standards, conditions, and hours of labor have been
33 established by rule (~~and regulation~~) of the director, the director
34 may upon application of either employers or employees conduct a public
35 hearing for the purpose of the adoption, amendment, or repeal of rules
36 (~~and regulations~~) adopted under (~~the authority of chapter 16, Laws~~
37 ~~of 1973 2nd ex. sess~~) this chapter.

1 **Sec. 15.** RCW 49.12.105 and 1994 c 164 s 18 are each amended to
2 read as follows:

3 An employer may apply to the director for an order for a variance
4 from any rule (~~((or regulation))~~) establishing a standard for wages,
5 hours, or conditions of labor adopted by the director under this
6 chapter. The director (~~((shall))~~) must issue an order granting a
7 variance if the director determines or decides that the applicant for
8 the variance has shown good cause for the lack of compliance. Any
9 order so issued (~~((shall))~~) must prescribe the conditions the employer
10 must maintain, and the practices, means, methods, operations,
11 standards, and processes (~~((which))~~) that the employer must adopt and
12 utilize to the extent they differ from the standard in question. At
13 any time the director may terminate and revoke (~~((such))~~) the order,
14 provided the employer was notified by the director of the termination
15 at least thirty days prior to (~~((said))~~) the termination.

16 **Sec. 16.** RCW 49.12.110 and 1994 c 164 s 19 are each amended to
17 read as follows:

18 For any occupation in which a minimum wage has been established,
19 the director may issue (~~((to))~~) an employer(~~((r))~~) a special certificate or
20 permit for an employee who (~~((is physically or mentally handicapped to
21 such a degree that he or she is unable to obtain))~~) has a physical or
22 mental disability that prevents him or her from obtaining employment in
23 the competitive labor market(~~((r or to))~~). The director may issue a
24 trainee or learner not otherwise subject to the jurisdiction of the
25 apprenticeship council, a special certificate or permit authorizing the
26 employment of (~~((such))~~) the employee for a wage less than the legal
27 minimum wage(~~((; and))~~). The director shall fix the minimum wage for
28 (~~((said person, such))~~) persons receiving a special certificate or permit
29 under this section. Special certificates or permits (~~((to))~~) may be
30 issued only (~~((in such cases as))~~) if the director (~~((may))~~) decides the
31 (~~((same is applied for))~~) application is made in good faith and (~~((that~~
32 ~~such))~~) the certificate or permit (~~((shall be))~~) is in force for (~~((such~~
33 ~~length of time as))~~) a time period determined by the director (~~((shall~~
34 ~~decide and determine is proper))~~).

35 **Sec. 17.** RCW 49.12.121 and 1993 c 294 s 9 are each amended to read
36 as follows:

1 (1) The department may at any time inquire into wages, hours, and
2 conditions of labor of minors employed in any trade, business, or
3 occupation in the state of Washington and may adopt special rules for
4 the protection of the safety, health, and welfare of minor employees.
5 However, the rules may not limit the hours per day or per week, or
6 other specified work period, that may be worked by minors who are
7 emancipated by court order.

8 (2) The department shall issue work permits to employers for the
9 employment of minors, after being assured the proposed employment of a
10 minor meets the standards for the health, safety, and welfare of minors
11 as set forth in the rules adopted by the department. No minor person
12 shall be employed in any occupation, trade, or industry subject (~~to~~
13 ~~chapter 16, Laws of 1973 2nd ex. sess.~~) this chapter, unless a work
14 permit has been properly issued, with the consent of the parent,
15 guardian, or other person having legal custody of the minor and with
16 the approval of the school which such minor may then be attending.
17 However, the consent of a parent, guardian, or other person, or the
18 approval of the school which the minor may then be attending, is
19 unnecessary if the minor is emancipated by court order.

20 (3) The minimum wage for minors shall be as prescribed in RCW
21 49.46.020.

22 **Sec. 18.** RCW 49.12.123 and 1991 c 303 s 8 are each amended to read
23 as follows:

24 In implementing state policy to assure the attendance of children
25 in the public schools (~~it shall be required of~~), any person, firm, or
26 corporation employing any minor (~~under the age of eighteen years to~~)
27 must obtain a work permit as set forth in RCW 49.12.121 and keep
28 (~~such~~) the permit on file during the minor's employment (~~of such~~
29 ~~minor, and~~). Upon termination of (~~such~~) the minor's employment (~~of~~
30 ~~such minor to return such~~), the permit must be returned to the
31 department (~~of labor and industries~~).

32 **Sec. 19.** RCW 49.12.130 and 1913 c 174 s 16 are each amended to
33 read as follows:

34 Any employer who discharges, or in any other manner discriminates
35 against any employee because (~~such~~) the employee has testified or is
36 about to testify, or because (~~such~~) the employer believes that

1 ((said)) the employee may testify in any investigation or proceedings
2 relative to the enforcement of RCW 49.12.010 through 49.12.180, (~~shall~~
3 ~~be deemed~~) is guilty of a misdemeanor (~~and upon conviction thereof,~~
4 ~~shall be punished~~), punishable by a fine of (~~from~~) at least twenty-
5 five dollars (~~to~~) and no more than one hundred dollars for each
6 (~~such misdemeanor~~) offense.

7 **Sec. 20.** RCW 49.12.150 and 1913 c 174 s 18 are each amended to
8 read as follows:

9 If any employee (~~shall~~) receives less than the legal minimum
10 wage, except as (~~hereinbefore~~) provided in RCW 49.12.110, (~~said~~)
11 the employee (~~shall be entitled to~~) may recover in a civil action the
12 full amount of the legal minimum wage (~~as herein provided for~~),
13 together with costs and attorney's fees to be fixed by the court,
14 notwithstanding any agreement to work for (~~such~~) a lesser wage. (~~In~~
15 ~~such action, however,~~) The employer shall be credited with any wages
16 (~~which~~) that have been paid (~~upon account~~) to the employee.

17 **Sec. 21.** RCW 49.12.170 and 1994 c 164 s 21 are each amended to
18 read as follows:

19 Except as otherwise provided in RCW 49.12.390 or 49.12.410, any
20 employer (~~employing~~) is guilty of a misdemeanor, punishable by a fine
21 of at least twenty-five dollars and no more than one thousand dollars,
22 if the employer: Employs any person for whom a minimum wage or
23 standards, conditions, and hours of labor have been specified, at less
24 than (~~said~~) the minimum wage, or under standards, or conditions of
25 labor or at hours of labor prohibited by (~~the~~) department rules (~~and~~
26 ~~regulations of the director~~); or (~~violating~~) violates any other (~~of~~
27 ~~the~~) provision(~~s~~) of this chapter (~~16, Laws of 1973 2nd ex. sess.,~~
28 ~~shall be deemed guilty of a misdemeanor, and shall, upon conviction~~
29 ~~thereof, be punished by a fine of not less than twenty five dollars nor~~
30 ~~more than one thousand dollars~~)).

31 **Sec. 22.** RCW 49.12.175 and 1943 c 254 s 1 are each amended to read
32 as follows:

33 Any employer in this state, employing both males and females, who
34 (~~shall~~) discriminates in any way in the payment of wages as between
35 sexes or who (~~shall~~) pays any female a (~~less~~) lesser wage, be it

1 time or piece work, or salary, than is being paid to males similarly
2 employed, or in any employment formerly performed by males, (~~shall~~
3 ~~be~~) is guilty of a misdemeanor. (~~If~~) Any female employee (~~shall~~)
4 who receives less compensation because of being discriminated against
5 on account of her sex, and in violation of this section, (~~she shall~~
6 ~~be~~) is entitled to recover in a civil action the full amount of
7 compensation that she would have received had she not been
8 discriminated against. (~~In such action, however,~~) The employer shall
9 be credited with any compensation (~~which~~) that has been paid to (~~her~~
10 ~~upon account~~) the employee. A differential in wages between employees
11 based in good faith on a factor or factors other than sex (~~shall~~)
12 does not constitute discrimination within the meaning of RCW 49.12.010
13 through 49.12.180.

14 **Sec. 23.** RCW 49.12.185 and 1973 2nd ex.s. c 16 s 17 are each
15 amended to read as follows:

16 (~~Chapter 16, Laws of 1973 2nd ex. sess. shall~~) This chapter does
17 not apply to newspaper vendors or carriers and domestic or casual labor
18 in or about private residences and agricultural labor as defined in RCW
19 50.04.150(~~, as now or hereafter amended~~).

20 **Sec. 24.** RCW 49.12.187 and 2003 c 401 s 3 and 2003 c 146 s 1 are
21 each reenacted and amended to read as follows:

22 This chapter (~~shall not be construed to~~) does not interfere with,
23 impede, or in any way diminish the right of employees to bargain
24 collectively with their employers through representatives of their own
25 choosing concerning wages or standards or conditions of employment.
26 However, rules adopted under this chapter regarding appropriate rest
27 and meal periods as applied to employees in the construction trades may
28 be superseded by a collective bargaining agreement negotiated under the
29 national labor relations act, 29 U.S.C. Sec. 151 et seq., if the terms
30 of the collective bargaining agreement covering (~~such~~) the employees
31 specifically require rest and meal periods and prescribe requirements
32 concerning those rest and meal periods.

33 Employees of public employers may enter into collective bargaining
34 contracts, labor/management agreements, or other mutually agreed to
35 employment agreements that specifically vary from or supersede, in part

1 or in total, rules adopted under this chapter regarding appropriate
2 rest and meal periods.

3 **Sec. 25.** RCW 49.12.200 and 1963 c 229 s 1 are each amended to read
4 as follows:

5 ((That hereafter in this state)) Every avenue of employment ((shall
6 be)) is open to women((~~and~~)). Any business, vocation, profession,
7 and calling followed and pursued by men may be followed and pursued by
8 women, and no person shall be disqualified from engaging in or pursuing
9 any business, vocation, profession, calling, or employment, or excluded
10 from any premises or place of work or employment, on account of sex.

11 **Sec. 26.** RCW 49.12.250 and 1985 c 336 s 2 are each amended to read
12 as follows:

13 (1) Each employer shall make ((such file(s))) the employee's
14 personnel file available locally within a reasonable period of time
15 after the employee requests the file(s).

16 (2) An employee annually may petition that the employer review all
17 information in the employee's personnel file(s) that are regularly
18 maintained by the employer as a part of his or her business records or
19 are subject to reference for information given to persons outside of
20 the company. The employer shall determine if there is any irrelevant
21 or erroneous information in the file(s), and shall remove all such
22 information from the file(s). If an employee does not agree with the
23 employer's determination, the employee may at his or her request have
24 placed in the employee's personnel file a statement containing the
25 employee's rebuttal or correction. Nothing in this subsection prevents
26 the employer from removing information more frequently.

27 (3) A former employee ((shall)) retains the right of rebuttal or
28 correction for ((a period not to exceed)) up to two years.

29 **Sec. 27.** RCW 49.12.275 and 1988 c 236 s 2 are each amended to read
30 as follows:

31 The department shall develop and furnish to each employer a poster
32 ((which)) that describes an employer's obligations and an employee's
33 rights under RCW 49.12.270 through 49.12.295. The poster must include
34 notice about any state law((~~r~~)) or rule((~~r~~ or regulation)) governing
35 maternity disability leave and indicate that federal or local

1 ordinances, laws, rules, or regulations may also apply. The poster
2 must also include a telephone number and an address of the department
3 to enable employees to obtain more information regarding RCW 49.12.270
4 through 49.12.295. Each employer must display this poster in a
5 conspicuous place. Every employer shall also post its leave policies,
6 if any, in a conspicuous place. Nothing in this section (~~shall be~~
7 ~~construed to~~) creates a right to continued employment.

8 **Sec. 28.** RCW 49.12.290 and 1988 c 236 s 6 are each amended to read
9 as follows:

10 Nothing in RCW 49.12.270 through 49.12.295 (~~shall be construed~~
11 ~~to~~) reduces any provision in a collective bargaining agreement.

12 **Sec. 29.** RCW 49.12.380 and 1991 c 303 s 2 are each amended to read
13 as follows:

14 Upon adoption of the rules under (~~section 1 of this act~~) RCW
15 49.12.121, the department (~~of labor and industries~~) shall implement
16 a comprehensive program to inform employers of the rules adopted. The
17 program shall include mailings, public service announcements, seminars,
18 and any other (~~means deemed~~) appropriate means to inform all
19 Washington employers of their rights and responsibilities regarding the
20 employment of minors.

21 **Sec. 30.** RCW 49.12.450 and 1998 c 334 s 2 are each amended to read
22 as follows:

23 (1) Notwithstanding the provisions of chapter 49.46 RCW or other
24 provisions of this chapter, the obligation of an employer to furnish or
25 compensate an employee for apparel required during work hours shall be
26 determined only under this section.

27 (2) Employers are not required to furnish or compensate employees
28 for apparel that an employer requires an employee to wear during
29 working hours unless the required apparel is a uniform.

30 (3) As used in this section, "uniform" means:

31 (a) Apparel of a distinctive style and quality that, when worn
32 outside of the workplace, clearly identifies the person as an employee
33 of a specific employer;

34 (b) Apparel that is specially marked with an employer's logo;

1 (c) Unique apparel representing an historical time period or an
2 ethnic tradition; or

3 (d) Formal apparel.

4 (4) Except as provided in subsection (5) of this section, if an
5 employer requires an employee to wear apparel of a common color that
6 conforms to a general dress code or style, the employer is not required
7 to furnish or compensate an employee for that apparel. For the
8 purposes of this subsection, "common color" is limited to the following
9 colors or light or dark variations of such colors: White, tan, or
10 blue, for tops; and tan, black, blue, or gray, for bottoms. An
11 employer is permitted to require an employee to obtain two sets of
12 wearing apparel to accommodate for the seasonal changes in weather
13 which necessitate a change in wearing apparel.

14 (5) If an employer changes the color or colors of apparel required
15 to be worn by any of his or her employees during a two-year period of
16 time, the employer shall furnish or compensate the employees for the
17 apparel. The employer (~~shall be~~) is required to furnish or
18 compensate only those employees who are affected by the change. The
19 two-year time period begins on the date the change in wearing apparel
20 goes into effect and ends two years from this date. The beginning and
21 end of the two-year time period applies to all employees regardless of
22 when the employee is hired.

23 (6) The department shall utilize negotiated rule making as defined
24 by RCW 34.05.310(2)(a) in the development and adoption of rules
25 defining apparel that conforms to a general dress code or style. This
26 subsection expires January 1, 2000.

27 (7) For the purposes of this section, personal protective equipment
28 required for employee protection under chapter 49.17 RCW is not deemed
29 to be employee wearing apparel.

30 **Sec. 31.** RCW 49.17.020 and 1997 c 362 s 2 are each amended to read
31 as follows:

32 (~~For the purposes of this chapter:~~) The definitions in this
33 section apply throughout this chapter unless the context clearly
34 requires otherwise.

35 (1) (~~The term~~) "Agriculture" means farming and includes, but is
36 not limited to:

37 (a) The cultivation and tillage of the soil;

- 1 (b) Dairying;
- 2 (c) The production, cultivation, growing, and harvesting of any
3 agricultural or horticultural commodity;
- 4 (d) The raising of livestock, bees, fur-bearing animals, or
5 poultry; and
- 6 (e) Any practices performed by a farmer or on a farm, incident to
7 or in connection with such farming operations, including but not
8 limited to preparation for market and delivery to:
- 9 (i) Storage;
- 10 (ii) Market; or
- 11 (iii) Carriers for transportation to market.
- 12 (~~The term~~) "Agriculture" does not mean a farmer's processing for
13 sale or handling for sale a commodity or product grown or produced by
14 a person other than the farmer or the farmer's employees.
- 15 (2) (~~The term~~) "Director" means the director of the department of
16 labor and industries, or his or her designated representative.
- 17 (3) (~~The term~~) "Department" means the department of labor and
18 industries.
- 19 (4) (~~The term~~) "Employer" means any person, firm, corporation,
20 partnership, business trust, legal representative, or other business
21 entity (~~which~~) that engages in any business, industry, profession, or
22 activity in this state and employs one or more employees or who
23 contracts with one or more persons, the essence of which is the
24 personal labor of such person or persons and includes the state,
25 counties, cities, and all municipal corporations, public corporations,
26 political subdivisions of the state, and charitable organizations(~~(+
27 PROVIDED, That~~)). However, any person, partnership, or business entity
28 not having employees, and who is covered by the industrial insurance
29 act shall be considered both an employer and an employee.
- 30 (5) (~~The term~~) "Employee" means an employee of an employer who is
31 employed in the business of his or her employer whether by way of
32 manual labor or otherwise and every person in this state who is engaged
33 in the employment of or who is working under an independent contract
34 the essence of which is his or her personal labor for an employer under
35 this chapter whether by way of manual labor or otherwise.
- 36 (6) (~~The term~~) "Person" means one or more individuals,
37 partnerships, associations, corporations, business trusts, legal
38 representatives, or any organized group of persons.

1 (7) (~~The term~~) "Safety and health standard" means a standard
2 (~~which~~) that requires the adoption or use of one or more practices,
3 means, methods, operations, or processes reasonably necessary or
4 appropriate to provide safe or healthful employment and places of
5 employment.

6 (8) (~~The term~~) "WISHA" means the Washington industrial safety and
7 health act.

8 (9) "Workplace" means any plant, yard, premises, room, or other
9 place where an employee or employees are employed for the performance
10 of labor or service over which the employer has the right of access or
11 control, and includes, but is not limited to, all workplaces covered by
12 industrial insurance under Title 51 RCW(~~, as now or hereafter~~
13 ~~amended~~)).

14 (~~(+9)~~) (10) The term "working day" means a calendar day, except
15 Saturdays, Sundays, and all legal holidays as set forth in RCW
16 1.16.050, as now or hereafter amended, and for the purposes of the
17 computation of time within which an act is to be done under the
18 provisions of this chapter, shall be computed by excluding the first
19 working day and including the last working day.

20 **Sec. 32.** RCW 49.17.030 and 1973 c 80 s 3 are each amended to read
21 as follows:

22 This chapter (~~shall apply~~) applies with respect to employment
23 performed in any workplace within the state. The department (~~of labor~~
24 ~~and industries~~) shall provide by rule for a schedule of fees and
25 charges to be paid by each employer subject to this chapter who is not
26 subject to or obtaining coverage under the industrial insurance laws
27 and who is not a self-insurer. The fees and charges collected (~~shall~~
28 ~~be~~) are for the purpose of defraying such employer's pro rata share of
29 the expenses of enforcing and administering this chapter.

30 **Sec. 33.** RCW 49.17.040 and 1973 c 80 s 4 are each amended to read
31 as follows:

32 The director shall make, adopt, modify, and repeal rules (~~and~~
33 ~~regulations~~) governing safety and health standards for conditions of
34 employment as authorized by this chapter after a public hearing in
35 conformance with the administrative procedure act and (~~the provisions~~
36 ~~of~~) this chapter. At least thirty days (~~prior to such~~) before a

1 public hearing, the director shall cause public notice of ~~((such))~~ the
2 hearing to be made in newspapers of general circulation in this state,
3 of the date, time, and place of ~~((such))~~ the public hearing, along with
4 a general description of the subject matter of the proposed rules and
5 information as to where copies of any rules ~~((and regulations))~~
6 proposed for adoption may be obtained and with a solicitation for
7 recommendations in writing or suggestions for inclusion or changes in
8 ~~((such))~~ the rules to be submitted not later than five days ~~((prior to~~
9 ~~such))~~ before the public hearing. ~~((Any preexisting))~~ Rules adopted by
10 the department ~~((of labor and industries))~~ before the effective date of
11 this section relating to health and safety standards in workplaces
12 subject to the jurisdiction of the department ~~((shall))~~ remain
13 effective ~~((insofar as such))~~ if the rules are not inconsistent with
14 ~~((the provisions of))~~ this chapter.

15 **Sec. 34.** RCW 49.17.041 and 1995 c 371 s 2 are each amended to read
16 as follows:

17 ~~(1)((a) Except as provided in (b) of this subsection, no rules~~
18 ~~adopted under this chapter amending or establishing agricultural safety~~
19 ~~standards shall take effect during the period beginning January 1,~~
20 ~~1995, and ending January 15, 1996. This subsection applies, but is not~~
21 ~~limited to applying, to a rule adopted before January 1, 1995, but with~~
22 ~~an effective date which is during the period beginning January 1, 1995,~~
23 ~~and ending January 15, 1996, and to provisions of rules adopted prior~~
24 ~~to January 1, 1995, which provisions are to become effective during the~~
25 ~~period beginning January 1, 1995, and ending January 15, 1996.~~

26 ~~(b) Subsection (1)(a) of this section does not apply to:~~
27 ~~Provisions of rules that were in effect before January 1, 1995;~~
28 ~~emergency rules adopted under RCW 34.05.350; or revisions to chapter~~
29 ~~296-306 WAC regarding rollover protective structures that were adopted~~
30 ~~in 1994 and effective March 1, 1995, and that are additionally revised~~
31 ~~to refer to the variance process available under this chapter.~~

32 ~~(2))~~ The rules for agricultural safety adopted under this chapter
33 must:

34 (a) Establish, for agricultural employers, an agriculture safety
35 standard that includes agriculture-specific rules and specific
36 references to the general industry safety standard adopted under this
37 chapter ~~((49.17 RCW))~~; and

1 (b) Exempt agricultural employers from the general industry safety
2 standard adopted under this chapter (~~(49.17-RCW)~~) for all rules not
3 specifically referenced in the agriculture safety standard.

4 (~~(+3)~~) (2) The department shall publish in one volume all of the
5 occupational safety rules that apply to agricultural employers and
6 shall make this volume available to all agricultural employers (~~(before~~
7 ~~January 15, 1996)~~). This volume must be available in both English and
8 Spanish.

9 (~~(+4)~~) (3) The department shall provide training, education, and
10 enhanced consultation services concerning its agricultural safety rules
11 to agricultural employers before the rules' effective dates. (~~The~~
12 ~~training, education, and consultation must continue throughout the~~
13 ~~winter of 1995-1996.)~~) Training and education programs must be
14 provided throughout the state and must be coordinated with agricultural
15 associations in order to meet their members' needs.

16 (~~(+5)~~) (4) The department shall provide, for informational
17 purposes, a list of commercially available rollover protective
18 structures for tractors used in agricultural operations manufactured
19 before October 25, 1976. The list must include the name and address of
20 the manufacturer and the approximate price of the structure. Included
21 with the list shall be a statement indicating that an employer may
22 apply for a variance from the rules requiring rollover protective
23 structures under this chapter and that variances may be granted in
24 appropriate circumstances on a case-by-case basis. The statement shall
25 also provide examples of circumstances under which a variance may be
26 granted. The list and statement shall be generally available to the
27 agricultural community before the department may take any action to
28 enforce rules requiring rollover protective structures for tractors
29 used in agricultural operations manufactured before October 25, 1976.

30 **Sec. 35.** RCW 49.17.050 and 1998 c 224 s 1 are each amended to read
31 as follows:

32 In (~~(the adoption of)~~) adopting rules (~~(and regulations)~~) under
33 (~~(the authority of)~~) this chapter, the director shall:

34 (1) Provide for the preparation, adoption, amendment, or repeal of
35 rules (~~(and regulations)~~) of safety and health standards governing the
36 conditions of employment of general and special application in all
37 workplaces;

1 (2) Provide for the adoption of occupational health and safety
2 standards (~~(which)~~) that are at least as effective as those adopted or
3 recognized by the United States secretary of labor under the authority
4 of the occupational safety and health act of 1970 (~~(Public Law)~~) P.L.
5 91-596; 84 Stat. 1590);

6 (3) Provide a method of encouraging employers and employees in
7 their efforts to reduce the number of safety and health hazards at
8 their workplaces and to stimulate employers and employees to institute
9 new and to perfect existing programs for providing safe and healthful
10 working conditions;

11 (4) Provide for the (~~(promulgation)~~) adoption of health and safety
12 standards and the control of conditions in all workplaces concerning
13 gases, vapors, dust, or other airborne particles, toxic materials, or
14 harmful physical agents (~~(which)~~) that shall set a standard (~~(which)~~)
15 that most adequately assures, to the extent feasible, on the basis of
16 the best available evidence, that no employee will suffer material
17 impairment of health or functional capacity even if such employee has
18 regular exposure to the hazard dealt with by such standard for the
19 period of his or her working life; any such standards shall require
20 where appropriate the use of protective devices or equipment and for
21 monitoring or measuring any such gases, vapors, dust, or other airborne
22 particles, toxic materials, or harmful physical agents;

23 (5) Provide for appropriate reporting procedures by employers with
24 respect to (~~(such)~~) information relating to conditions of employment
25 (~~(which)~~) that will assist in achieving the objectives of this chapter;

26 (6) Provide for the frequency, method, and manner of the making of
27 inspections of workplaces without advance notice; (~~(and,)~~)

28 (7) Provide for the publication and dissemination to employers,
29 employees, and labor organizations and the posting where appropriate by
30 employers of informational, education, or training materials calculated
31 to aid and assist in achieving the objectives of this chapter;

32 (8) Provide for the establishment of new and the perfection and
33 expansion of existing programs for occupational safety and health
34 education for employers and employees, and, in addition institute
35 methods and procedures for the establishment of a program for voluntary
36 compliance solely through the use of advice and consultation with
37 employers and employees with recommendations including recommendations
38 of methods to abate violations relating to the requirements of this

1 chapter and all applicable safety and health standards and rules (~~and~~
2 ~~regulations promulgated pursuant to the authority of~~) adopted under
3 this chapter;

4 (9) Provide for the adoption of safety and health standards
5 requiring the use of safeguards in trenches and excavations and around
6 openings of hoistways, hatchways, elevators, stairways, and similar
7 openings;

8 (10) Provide for the (~~promulgation~~) adoption of health and safety
9 standards requiring the use of safeguards for all vats, pans, trimmers,
10 cut off, gang edger, and other saws, planers, presses, formers, cogs,
11 gearing, belting, shafting, coupling, set screws, live rollers,
12 conveyors, mangles in laundries, and machinery of similar description,
13 which can be effectively guarded with due regard to the ordinary use of
14 such machinery and appliances and the danger to employees therefrom,
15 and with which the employees of any such workplace may come in contact
16 while in the performance of their duties and prescribe methods,
17 practices, or processes to be followed by employers (~~which~~) that will
18 enhance the health and safety of employees in the performance of their
19 duties when in proximity to machinery or appliances mentioned in this
20 subsection; and

21 (11) Certify that no later than twenty business days (~~prior to~~)
22 before the effective date of any significant legislative rule, as
23 defined by RCW 34.05.328, a meeting of impacted parties is convened to:
24 (a) Identify ambiguities and problem areas in the rule; (b) coordinate
25 education and public relations efforts by all parties; (c) provide
26 comments regarding internal department training and enforcement plans;
27 and (d) provide comments regarding appropriate evaluation mechanisms to
28 determine the effectiveness of the new rule. The meeting shall include
29 a balanced representation of both business and labor from impacted
30 industries, department personnel responsible for the above subject
31 areas, and other agencies or key stakeholder groups as determined by
32 the department. An existing advisory committee may be utilized if
33 appropriate.

34 **Sec. 36.** RCW 49.17.055 and 1997 c 107 s 1 are each amended to read
35 as follows:

36 The director shall appoint a WISHA advisory committee composed of
37 ten members: Four members representing subject workers, each of whom

1 shall be appointed from a list of at least three names submitted by a
2 recognized statewide organization of employees, representing a majority
3 of employees; four members representing subject employers, each of whom
4 shall be appointed from a list of at least three names submitted by a
5 recognized statewide organization of employers, representing a majority
6 of employers; and two ex officio members, without a vote, one of whom
7 shall be the (~~chairperson~~) chair of the board of industrial insurance
8 appeals, and the other representing the department. The member
9 representing the department shall be (~~chairperson~~) chair. The
10 committee shall provide comment on department rule making, policies,
11 and other initiatives. The committee shall also conduct a continuing
12 study of any aspect of safety and health the committee determines to
13 require their consideration. The committee shall report its findings
14 to the department or the board of industrial insurance appeals for
15 action as (~~deemed~~) appropriate. The members of the committee shall
16 be appointed for a term of three years commencing on July 1, 1997, and
17 the terms of the members representing the workers and employers shall
18 be staggered so that the director shall designate one member from each
19 group initially appointed whose term (~~shall~~) expires (~~on~~) June 30,
20 1998, and one member from each group whose term (~~shall~~) expires
21 (~~on~~) June 30, 1999. The members shall serve without compensation,
22 but are entitled to travel expenses as provided in RCW 43.03.050 and
23 43.03.060. The committee may hire such experts, if any, as it requires
24 to discharge its duties and may utilize such personnel and facilities
25 of the department and board of industrial insurance appeals as it
26 needs, without charge. All expenses of the committee must be paid by
27 the department.

28 **Sec. 37.** RCW 49.17.060 and 1973 c 80 s 6 are each amended to read
29 as follows:

30 Each employer:

31 (1) Shall furnish to each of his or her employees a place of
32 employment free from recognized hazards that are causing or likely to
33 cause serious injury or death to his or her employees(~~(+—PROVIDED,~~
34 ~~That)~~). No citation or order assessing a penalty shall be issued to
35 any employer solely under (~~the authority of~~) this subsection except
36 where no applicable rule (~~or regulation~~) has been adopted by the

1 department covering the unsafe or unhealthful condition of employment
2 at the workplace; and

3 (2) Shall comply with the rules(~~(, regulations,)~~) and orders
4 (~~(promulgated)~~) adopted under this chapter.

5 **Sec. 38.** RCW 49.17.070 and 2006 c 31 s 2 are each amended to read
6 as follows:

7 (1) Subject to subsections (2) through (5) of this section, the
8 director, or his or her authorized representative, in carrying out his
9 or her duties under this chapter, upon the presentation of appropriate
10 credentials to the owner, manager, operator, or on-site person in
11 charge of the worksite, is authorized:

12 (a) To enter without delay and at all reasonable times the factory,
13 plant, establishment, construction site, or other area, workplace, or
14 environment where work is performed by an employee of an employer; and

15 (b) To inspect, survey, and investigate during regular working
16 hours and at other reasonable times, and within reasonable limits and
17 in a reasonable manner, any such workplace and all pertinent
18 conditions, structures, machines, apparatus, devices, equipment, and
19 materials therein, and to question privately any such employer, owner,
20 operator, agent, or employee.

21 (2) In making inspections and (~~(making)~~) investigations under this
22 chapter the director may require the attendance and testimony of
23 witnesses and the production of evidence under oath. Witnesses shall
24 be paid the same fees and mileage that are paid witnesses in the
25 superior courts. In the case of contumacy, failure, or refusal of any
26 person to obey (~~(such)~~) an order, any superior court within the
27 jurisdiction of which (~~(such)~~) the person is found, or resides, or
28 transacts business, upon the application of the director, (~~(shall~~
29 ~~have)~~) has jurisdiction to issue (~~(to such)~~) the person an order
30 requiring (~~(such)~~) the person to appear to produce evidence if, as, and
31 when so ordered, and to give testimony relating to the matter under
32 investigation or in question, and any failure to obey (~~(such)~~) the
33 order of the court may be punished by (~~(said)~~) the court as a contempt
34 thereof.

35 (3) Except as provided in subsection (4) of this section or RCW
36 49.17.075, the director or his or her authorized representative shall
37 obtain consent from the owner, manager, operator, or his or her on-site

1 person in charge of the worksite when entering any worksite located on
2 private property to carry out his or her duties under this chapter.
3 Solely for the purpose of requesting the consent required by this
4 section, the director or his or her authorized representative shall, in
5 a safe manner, enter a worksite at an entry point designated by the
6 employer or, in the event no entry point has been designated, at a
7 reasonably recognizable entry point.

8 (4) This section does not prohibit the director or his or her
9 authorized representative from taking action consistent with a
10 recognized exception to the warrant requirements of the federal and
11 state Constitutions.

12 (5) This section does not require advance notice of an inspection.

13 **Sec. 39.** RCW 49.17.080 and 1973 c 80 s 8 are each amended to read
14 as follows:

15 (1) Any employer may apply to the director for a temporary order
16 granting a variance from any safety and health standard (~~(promulgated)~~)
17 adopted by rule (~~(or regulation)~~) under (~~(the authority of)~~) this
18 chapter. (~~(Such)~~) The temporary order shall be granted only if the
19 employer files an application (~~(which)~~) that meets the requirements of
20 subsection (2) of this section and establishes that the employer (a) is
21 unable to comply with a safety or health standard because of the
22 unavailability of professional or technical personnel, or of materials
23 and equipment needed to come into compliance with the safety and health
24 standard, or because necessary construction or alteration of facilities
25 cannot be completed by the effective date of such safety and health
26 standard(~~(, that he)~~); (b) is taking all available steps to safeguard
27 his or her employees against the hazards covered by the safety and
28 health standard(~~(, and he)~~); and (c) has an effective program for
29 coming into compliance with such safety and health standard as quickly
30 as practicable. Any temporary order issued under the authority of this
31 subsection shall prescribe the practices, means, methods, operations,
32 and processes (~~(which)~~) that the employer must adopt and use while the
33 order is in effect and state in detail his or her program for coming
34 into compliance with the safety and health standard. Such a temporary
35 order may be granted only after notice to employees and an opportunity
36 for a hearing upon request of the employer or any affected employee.
37 The name of any affected employee requesting a hearing under (~~(the~~

1 ~~provisions of~~) this subsection (~~shall be~~) is confidential and shall
2 not be disclosed without the consent of (~~such~~) the employee. The
3 director may issue one interim order to be effective until a
4 determination is made or a decision rendered if a hearing is demanded.
5 No temporary order may be in effect for longer than the period needed
6 by the employer to achieve compliance with the standard, or one year,
7 whichever is shorter, except that such an order may be renewed not more
8 than twice, so long as the requirements of this subsection are met and
9 if an application for renewal is filed at least ninety days (~~prior~~
10 ~~to~~) before the expiration date of the order. No renewal of a
11 temporary order may remain in effect for longer than one hundred eighty
12 days.

13 (2) An application for a temporary order under this section shall
14 contain:

15 (a) A specification of the safety and health standard or portion
16 thereof from which the employer seeks a variance;

17 (b) A representation by the employer, supported by representations
18 from qualified persons having first hand knowledge of the facts
19 represented, that he or she is unable to comply with the safety and
20 health standard or portion thereof and a detailed statement of the
21 reasons therefor;

22 (c) A statement of the steps the employer has taken and will take,
23 with specific dates, to protect employees against the hazard covered by
24 the standard;

25 (d) A statement as to when the employer expects to be able to
26 comply with the standard or portion thereof and what steps he or she
27 has taken and will take, with dates specified, to come into compliance
28 with the standard; and

29 (e) A certification that the employer, by the date of mailing or
30 delivery of the application to the director, has informed his or her
31 employees of the application by providing a copy thereof to his or her
32 employees or their authorized representative by posting a copy of
33 (~~such~~) the application in a place or places reasonably accessible to
34 all employees or by other appropriate means of notification and by
35 mailing a copy to the authorized representative of (~~such~~) the
36 employees(~~(+)~~). The application shall set forth the manner in which
37 the employees have been so informed. The application shall also advise

1 employees and their employee representatives of their right to apply to
2 the director to conduct a hearing upon the application for a variance.

3 **Sec. 40.** RCW 49.17.090 and 1973 c 80 s 9 are each amended to read
4 as follows:

5 Any employer may apply to the director for an order for a variance
6 from any rule (~~((or regulation))~~) establishing a safety and health
7 standard (~~((promulgated))~~) adopted under this chapter. Affected
8 employees shall be given notice of each (~~((such))~~) application and, in
9 the manner prescribed by RCW 49.17.080, shall be informed of their
10 right to request a hearing on any (~~((such))~~) application. The director
11 shall issue (~~((such))~~) an order granting a variance, after opportunity
12 for an inspection, if he or she determines or decides after a hearing
13 has been held, if request for hearing has been made, that the applicant
14 for the variance has demonstrated by a preponderance of the evidence
15 that the conditions, practices, means, methods, operations, or
16 processes used or proposed to be used by (~~((such))~~) the applicant
17 employer will provide employment and places of employment to his or her
18 employees (~~((which))~~) that are as safe and healthful as those (~~((which))~~)
19 that would prevail if he or she complied with the safety and health
20 standard or standards from which the variance is sought. The order so
21 issued shall prescribe the conditions the employer must maintain, and
22 the practices, means, methods, operations, and processes (~~((which))~~) that
23 he or she must adopt and utilize to the extent they differ from the
24 standard in question. At any time after six months has elapsed from
25 the date of the issuance of the order granting a variance (~~((upon~~
26 ~~application of))~~), an employer, employee, or the director on his or her
27 own motion, may apply to the director to modify or revoke the order for
28 a variance. The director may, after notice has been given in the
29 manner prescribed for the issuance of (~~((such))~~) the order (~~((may))~~),
30 modify or revoke the order granting the variance from any standard
31 (~~((promulgated))~~) adopted under (~~((the authority of))~~) this chapter.

32 **Sec. 41.** RCW 49.17.100 and 1986 c 192 s 1 are each amended to read
33 as follows:

34 A representative of the employer and an employee representative
35 authorized by the employees of (~~((such))~~) the employer (~~((shall be given~~
36 ~~an opportunity to))~~) may accompany the director, or his or her

1 authorized representative, during the physical inspection of any
2 workplace for the purpose of aiding ~~((such))~~ the inspection. Where
3 there is no authorized employee representative, the director or his or
4 her authorized representative shall consult with a reasonable number of
5 employees concerning matters of health and safety in the workplace.
6 The director may adopt procedural rules ~~((and regulations))~~ to
7 implement ~~((the provisions of))~~ this section ~~((: PROVIDED, That))~~.
8 Neither this section, nor any other provision of this chapter, ~~((shall~~
9 ~~be construed to))~~ interferes with, impedes, or in any way diminishes
10 the right of employees to bargain collectively with their employers
11 through representatives of their own choosing concerning wages or
12 standards or conditions of employment ~~((which))~~ that equal or exceed
13 those established under ~~((the authority of))~~ this chapter.

14 **Sec. 42.** RCW 49.17.110 and 1973 c 80 s 11 are each amended to read
15 as follows:

16 Each employee shall comply with ~~((the provisions of))~~ this chapter
17 and all rules ~~((, regulations,))~~ and orders issued ~~((pursuant to the~~
18 ~~authority of))~~ under this chapter ~~((which))~~ that are applicable to his
19 or her own actions and conduct in the course of his or her employment.
20 Any employee or representative of employees who in good faith believes
21 that a violation of a safety or health standard, ~~((promulgated))~~
22 adopted by rule under ~~((the authority of))~~ this chapter, exists that
23 threatens physical harm to employees, or that an imminent danger to
24 ~~((such))~~ the employees exists, may request an inspection of the
25 workplace by giving notice to the director or his or her authorized
26 representative of ~~((such))~~ the violation or danger. ~~((Any such))~~ The
27 notice shall be ~~((reduced to))~~ in writing, shall set forth with
28 reasonable particularity the grounds for the notice, and shall be
29 signed by the employee or representative of employees. A copy of the
30 notice shall be provided the employer or his or her agent no later than
31 at the time of inspection, except that, upon the request of the person
32 giving ~~((such))~~ the notice, his or her name and the names of individual
33 employees referred to ~~((therein))~~ in the notice shall not appear in
34 ~~((such))~~ the copy or on any record published, released, or made
35 available ~~((pursuant to any provision of))~~ under this chapter. If upon
36 receipt of ~~((such))~~ the notification the director determines that there
37 are reasonable grounds to believe that ~~((such))~~ a violation or danger

1 exists, he or she shall make a special inspection as soon as
2 practicable, to determine if (~~such~~) the violation or danger exists.
3 If the director determines there are no reasonable grounds to believe
4 that a violation or danger exists, he or she shall notify the employer
5 and the employee or representative of the employees in writing of
6 (~~such~~) the determination.

7 (~~Prior to~~) Before or during any inspection of a workplace, any
8 employee or representative of employees employed in (~~such~~) the
9 workplace may notify the director or any representative of the director
10 responsible for conducting the inspection, in writing, of any violation
11 of this chapter (~~which~~) that he or she has reason to believe exists
12 in such workplace. The director shall, by rule, establish procedures
13 for informal review of any refusal by a representative of the director
14 to issue a citation with respect to any (~~such~~) alleged violation, and
15 shall furnish the employee or representative of employees requesting
16 (~~such~~) review a written statement of the reasons for the director's
17 final disposition of the case.

18 **Sec. 43.** RCW 49.17.120 and 1999 c 93 s 1 are each amended to read
19 as follows:

20 (1) If upon inspection or investigation the director or his or her
21 authorized representative believes that an employer has violated a
22 requirement of RCW 49.17.060, or any safety or health standard
23 (~~promulgated by rule~~) adopted by the director in rule, or the
24 conditions of any order granting a variance (~~pursuant to~~) under this
25 chapter, the director shall with reasonable promptness issue a citation
26 to the employer. Each citation shall be in writing and shall describe
27 with particularity the nature of the violation, including a reference
28 to the provisions of the statute, standard, rule, regulation, or order
29 alleged to have been violated. In addition, the citation shall fix a
30 reasonable time for the abatement of the violation.

31 (2) The director may prescribe procedures for the issuance of a
32 notice in lieu of a citation with respect to de minimis violations
33 (~~which~~) that have no direct or immediate relationship to safety or
34 health.

35 (3) Each citation, or a copy or copies thereof, issued under the
36 authority of this section and RCW 49.17.130 shall be prominently
37 posted, at or near each place a violation referred to in the citation

1 occurred or as may otherwise be prescribed in (~~regulations~~) rules
2 issued by the director. The director shall provide by rule for
3 procedures to be followed by an employee representative upon written
4 application to receive copies of citations and notices issued to any
5 employer having employees who are represented by (~~such~~) the employee
6 representative. (~~Such~~) The rule may prescribe the form of (~~such~~)
7 the application, the time for renewal of applications, and the
8 eligibility of the applicant to receive copies of citations and
9 notices.

10 (4) No citation may be issued under this section or RCW 49.17.130
11 after the expiration of six months following a compliance inspection,
12 investigation, or survey revealing any (~~such~~) violation.

13 (5)(a) No citation may be issued under this section if there is
14 unpreventable employee misconduct that led to the violation, but the
15 employer must show the existence of:

16 (i) A thorough safety program, including work rules, training, and
17 equipment designed to prevent the violation;

18 (ii) Adequate communication of these rules to employees;

19 (iii) Steps to discover and correct violations of its safety rules;
20 and

21 (iv) Effective enforcement of its safety program as written in
22 practice and not just in theory.

23 (b) This subsection (5) does not eliminate or modify any other
24 defenses that may exist to a citation.

25 **Sec. 44.** RCW 49.17.130 and 1973 c 80 s 13 are each amended to read
26 as follows:

27 (1) If upon inspection or investigation, the director, or his or
28 her authorized representative, believes that an employer has violated
29 a requirement of RCW 49.17.060, or any safety or health standard
30 (~~promulgated~~) adopted by rule(~~s~~) of the department, or any
31 conditions of an order granting a variance, which violation is such
32 that a danger exists from which there is a substantial probability that
33 death or serious physical harm could result to any employee, the
34 director or his or her authorized representative shall issue a citation
35 and may issue an order immediately restraining (~~any such~~) the
36 condition, practice, method, process, or means in the workplace. Any
37 order issued under this section may require (~~such~~) steps to be taken

1 as may be necessary to avoid, correct, or remove ((such)) the danger
2 and prohibit the employment or presence of any individual in locations
3 or under conditions where ((such)) the danger exists, except
4 individuals whose presence is necessary to avoid, correct, or remove
5 ((such)) the danger or to maintain the capacity of a continuous process
6 operation in order that the resumption of normal operations may be had
7 without a complete cessation of operations, or where a cessation of
8 operations is necessary, to permit such to be accomplished in a safe
9 and orderly manner. In addition, if any machine or equipment, or any
10 part thereof, is in violation of a requirement of RCW 49.17.060 or any
11 safety or health standard ((promulgated)) adopted by rule((s)) of the
12 department, and the operation of ((such)) the machine or equipment
13 gives rise to a substantial probability that death or serious physical
14 harm could result to any employee, and an order of immediate restraint
15 of the use of ((such)) the machine or equipment has been issued under
16 this subsection, the use of ((such)) the machine or equipment is
17 prohibited, and a notice to that effect shall be attached thereto by
18 the director or his or her authorized representative.

19 (2) Whenever the director, or his or her authorized representative,
20 concludes that a condition of employment described in subsection (1) of
21 this section exists in any workplace, he or she shall promptly inform
22 the affected employees and employers of the danger.

23 (3) At any time that a citation or a citation and order restraining
24 any condition of employment or practice described in subsection (1) of
25 this section is issued by the director, or his or her authorized
26 representative, he or she may in addition request the attorney general
27 to make an application to the superior court of the county ((~~wherein~~
28 ~~such~~) where the condition of employment or practice exists for a
29 temporary restraining order or ((such)) other appropriate relief ((~~as~~
30 ~~appears to be appropriate under the circumstances~~)).

31 **Sec. 45.** RCW 49.17.140 and 1994 c 61 s 1 are each amended to read
32 as follows:

33 (1) If after an inspection or investigation the director or the
34 director's authorized representative issues a citation under ((~~the~~
35 ~~authority of~~) RCW 49.17.120 or 49.17.130, the department, within a
36 reasonable time after the termination of ((such)) the inspection or
37 investigation, shall notify the employer by certified mail of the

1 penalty to be assessed under (~~the authority of~~) RCW 49.17.180 and
2 shall state that the employer has fifteen working days within which to
3 notify the director that the employer wishes to appeal the citation or
4 assessment of penalty. If, within fifteen working days from the
5 communication of the notice issued by the director the employer fails
6 to notify the director that the employer intends to appeal the citation
7 or assessment penalty, and no notice is filed by any employee or
8 representative of employees under subsection (3) of this section within
9 such time, the citation and the assessment shall be deemed a final
10 order of the department and not subject to review by any court or
11 agency.

12 (2) If the director has reason to believe that an employer has
13 failed to correct a violation for which a citation has been issued
14 within the period permitted in the citation for its correction, which
15 period shall not begin to run until the entry of a final order in the
16 case of any appeal proceedings under this section initiated by the
17 employer in good faith and not solely for delay or avoidance of
18 penalties, the director shall notify the employer by certified mail of
19 such failure to correct the violation and of the penalty to be assessed
20 under RCW 49.17.180 by reason of (~~such~~) the failure, and shall state
21 that the employer has fifteen working days from the communication of
22 (~~such~~) the notification and assessment of penalty to notify the
23 director that the employer wishes to appeal the director's notification
24 of the assessment of penalty. If, within fifteen working days from the
25 receipt of notification issued by the director the employer fails to
26 notify the director that the employer intends to appeal the
27 notification of assessment of penalty, the notification and assessment
28 of penalty shall be deemed a final order of the department and not
29 subject to review by any court or agency.

30 (3)(a) If any employer notifies the director that the employer
31 intends to appeal the citation issued under (~~either~~) RCW 49.17.120 or
32 49.17.130 or notification of the assessment of a penalty issued under
33 subsection(~~s~~) (1) or (2) of this section, or if, within fifteen
34 working days from the issuance of a citation under (~~either~~) RCW
35 49.17.120 or 49.17.130 any employee or representative of employees
36 files a notice with the director alleging that the period of time fixed
37 in the citation for the abatement of the violation is unreasonable, the
38 director may reassume jurisdiction over the entire matter, or any

1 portion thereof upon which notice of intention to appeal has been filed
2 with the director (~~(pursuant to)~~) under this subsection. If the
3 director reassumes jurisdiction of all or any portion of the matter
4 upon which notice of appeal has been filed with the director, any
5 redetermination shall be completed and corrective notices of assessment
6 of penalty, citations, or revised periods of abatement completed within
7 a period of thirty working days. The thirty-working-day
8 redetermination period may be extended up to fifteen additional working
9 days upon agreement of all parties to the appeal. The redetermination
10 (~~(shall then)~~) becomes final subject to direct appeal to the board of
11 industrial insurance appeals within fifteen working days of (~~(such)~~)
12 the redetermination with service of notice of appeal upon the director.
13 (~~(In the event that)~~) If the director does not reassume jurisdiction
14 (~~(as provided in)~~) under this subsection, the director shall promptly
15 notify the state board of industrial insurance appeals of all
16 notifications of intention to appeal any such citations, any such
17 notices of assessment of penalty and any employee or representative of
18 employees notice of intention to appeal the period of time fixed for
19 abatement of a violation and in addition certify a full copy of the
20 record in such appeal matters to the board. The director shall adopt
21 rules of procedure for the reassumption of jurisdiction under this
22 subsection affording employers, employees, and employee representatives
23 notice of the reassumption of jurisdiction by the director, and an
24 opportunity to object or support the reassumption of jurisdiction,
25 either in writing or orally at an informal conference to be held
26 (~~(prior to)~~) before the expiration of the redetermination period. A
27 notice of appeal filed under this section shall stay the effectiveness
28 of any citation or notice of the assessment of a penalty pending review
29 by the board of industrial insurance appeals, but (~~(such)~~) the appeal
30 shall not stay the effectiveness of any order of immediate restraint
31 issued by the director under (~~(the authority of)~~) RCW 49.17.130. The
32 board of industrial insurance appeals shall afford an opportunity for
33 a hearing in the case of each (~~(such)~~) appellant and the department
34 shall be represented in (~~(such)~~) the hearing by the attorney general
35 (~~(and)~~). The board shall (~~(in addition)~~) provide affected employees or
36 authorized representatives of affected employees an opportunity to
37 participate as parties to hearings under this subsection. The board

1 shall thereafter make disposition of the issues in accordance with
2 procedures relative to contested cases appealed to the state board of
3 industrial insurance appeals.

4 (b) Upon application by an employer showing that a good faith
5 effort to comply with the abatement requirements of a citation has been
6 made and that the abatement has not been completed because of factors
7 beyond the employer's control, the director after affording an
8 opportunity for a hearing shall issue an order affirming or modifying
9 the abatement requirements in ~~((such))~~ the citation.

10 **Sec. 46.** RCW 49.17.150 and 1982 c 109 s 1 are each amended to read
11 as follows:

12 (1) Any person aggrieved by an order of the board of industrial
13 insurance appeals issued under RCW 49.17.140(3) may obtain a review of
14 ~~((such))~~ the order in the superior court for the county in which the
15 violation is alleged to have occurred, by filing in ~~((such))~~ the court
16 within thirty days following the communication of the board's order or
17 denial of any petition or petitions for review, a written notice of
18 appeal praying that the order be modified or set aside. ~~((Such))~~ The
19 appeal shall be perfected by filing with the clerk of the court and by
20 serving a copy thereof by mail, or personally, on the director and on
21 the board. The board shall ~~((thereupon))~~ transmit a copy of the notice
22 of appeal to all parties who participated in proceedings before the
23 board, and shall file in the court the complete record of the
24 proceedings. Upon ~~((such))~~ filing, the court ~~((shall have))~~ has
25 jurisdiction of the proceeding and of the question determined therein,
26 and ~~((shall have power to))~~ may grant such temporary relief or
27 restraining order as it deems just and proper, and ~~((to))~~ may make and
28 enter upon the pleadings and the record of proceedings a decree
29 affirming, modifying, or setting aside in all or in part, the decision
30 of the board of industrial insurance appeals and enforcing the same to
31 the extent that ~~((such))~~ the order is affirmed or modified. The
32 commencement of appellate proceedings under this subsection shall not,
33 unless ordered by the court, operate as a stay of the order of the
34 board of industrial insurance appeals. No objection that has not been
35 urged before the board shall be considered by the court, unless the
36 failure or neglect to urge ~~((such))~~ the objection shall be excused
37 because of extraordinary circumstances. The findings of the board or

1 hearing examiner where the board has denied a petition or petitions for
2 review with respect to questions of fact, if supported by substantial
3 evidence on the record considered as a whole, shall be conclusive. If
4 any party (~~shall apply~~) applies to the court for leave to adduce
5 additional evidence and (~~shall~~) shows to the satisfaction of the
6 court that (~~such~~) the additional evidence is material and that there
7 were reasonable grounds for the failure to adduce (~~such~~) the evidence
8 in the hearing before the board, the court may order (~~such~~) the
9 additional evidence to be taken before the board and to be made a part
10 of the record. The board may modify its findings as to the facts, or
11 make new findings, by reason of additional evidence so taken and filed,
12 and it shall file (~~such~~) the modified or new findings, which findings
13 with respect to questions of fact are supported by substantial evidence
14 on the record considered as a whole, shall be conclusive, and its
15 recommendations, if any, for the modification or setting aside of its
16 original order. Upon the filing of the record with it, the
17 jurisdiction of the court shall be exclusive and the judgment and
18 decree shall be final, except as the same shall be subject to review by
19 the supreme court. Appeals filed under this subsection shall be heard
20 expeditiously.

21 (2) The director may also obtain review or enforcement of any final
22 order of the board by filing a petition for (~~such~~) relief in the
23 superior court for the county in which the alleged violation occurred.
24 The provisions of subsection (1) of this section (~~shall~~) govern
25 (~~such~~) these proceedings to the extent applicable. If a notice of
26 appeal, as provided in subsection (1) of this section, is not filed
27 within thirty days after service of the board's order, the board's
28 findings of fact, decision, and order or the examiner's findings of
29 fact, decision, and order when a petition or petitions for review have
30 been denied shall be conclusive in connection with any petition for
31 enforcement (~~which~~) that is filed by the director after the
32 expiration of (~~such~~) the thirty-day period. In any such case, as
33 well as in the case of an unappealed citation or a notification of the
34 assessment of a penalty by the director, which has become a final order
35 under (~~subsection (1) or (2) of~~) RCW 49.17.140 (1) or (2) upon
36 application of the director, the clerk of the court, unless otherwise
37 ordered by the court, shall forthwith enter a decree enforcing the
38 citation and notice of assessment of penalty and shall transmit a copy

1 of ~~((such))~~ the decree to the director and the employer named in the
2 director's petition. In any contempt proceeding brought to enforce a
3 decree of the superior court entered ~~((pursuant to))~~ under this
4 ~~((subsection or subsection (1) of this))~~ section, the superior court
5 may assess the penalties provided in RCW 49.17.180, in addition to
6 invoking any other available remedies.

7 **Sec. 47.** RCW 49.17.160 and 1973 c 80 s 16 are each amended to read
8 as follows:

9 (1) No person shall discharge or in any manner discriminate against
10 any employee because ~~((such))~~ the employee has filed any complaint or
11 instituted or caused to be instituted any proceeding under or related
12 to this chapter, or has testified or is about to testify in any such
13 proceeding or because of the exercise by ~~((such))~~ the employee on
14 behalf of himself, herself, or others of any right afforded by this
15 chapter.

16 (2) Any employee who believes that he or she has been discharged or
17 otherwise discriminated against by any person in violation of this
18 section may, within thirty days after ~~((such))~~ the violation occurs,
19 file a complaint with the director alleging ~~((such))~~ discrimination.
20 Upon receipt of ~~((such))~~ the complaint, the director shall ~~((cause such~~
21 ~~investigation to be made))~~ investigate as he or she deems appropriate.
22 If upon ~~((such))~~ investigation, the director determines that ~~((the~~
23 ~~provisions of))~~ this section ~~((have))~~ has been violated, he or she
24 shall bring an action in the superior court of the county where ~~((in))~~
25 the violation is alleged to have occurred against the person or persons
26 who ~~((is))~~ are alleged to have violated ~~((the provisions of))~~ this
27 section. If the director determines that ~~((the provisions of))~~ this
28 section ~~((have))~~ has not been violated, the employee may institute the
29 action on his or her own behalf within thirty days of ~~((such))~~ the
30 determination. In any such action the superior court ~~((shall have))~~
31 has jurisdiction, for cause shown, to restrain violations of subsection
32 (1) of this section and order all appropriate relief including rehiring
33 or reinstatement of the employee to his or her former position with
34 back pay.

35 (3) Within ninety days of the receipt of the complaint filed under
36 this section, the director shall notify the complainant of his or her
37 determination under subsection (2) of this section.

1 **Sec. 48.** RCW 49.17.170 and 1973 c 80 s 17 are each amended to read
2 as follows:

3 (1) In addition to and after having invoked the powers of restraint
4 vested in the director as provided in RCW 49.17.130 the superior courts
5 of the state of Washington (~~shall~~) have jurisdiction upon petition of
6 the director, through the attorney general, to enjoin any condition or
7 practice in any workplace from which there is a substantial probability
8 that death or serious physical harm could result to any employee
9 immediately or before the imminence of such danger can be eliminated
10 through the enforcement procedures otherwise provided by this chapter.
11 Any order issued under this section may require such steps to be taken
12 as may be necessary to avoid, correct, or remove (~~such~~) the danger
13 and prohibit the employment or presence of any individual in locations
14 or under conditions where (~~such~~) the danger exists, except
15 individuals whose presence is necessary to avoid, correct, or remove
16 (~~such~~) the danger or to maintain the capacity of a continuous process
17 operation to resume normal operation without a complete cessation of
18 operations, or where a cessation of operations is necessary, to permit
19 such to be accomplished in a safe and orderly manner.

20 (2) Upon the filing of any such petition the superior courts of the
21 state of Washington (~~shall~~) have jurisdiction to grant (~~such~~)
22 injunctive relief or a temporary restraining order pending the outcome
23 of enforcement proceedings (~~pursuant to~~) under this chapter, except
24 that no temporary restraining order issued without notice shall be
25 effective for a period longer than five working days.

26 (3) Whenever and as soon as any authorized representative of the
27 director concludes that a condition or practice described in subsection
28 (1) exists in any workplace, he or she shall inform the affected
29 employees and employers of the danger and may recommend to the director
30 that relief be sought under this section.

31 (4) If the director arbitrarily or capriciously fails to invoke his
32 or her restraining authority under RCW 49.17.130 or fails to seek
33 relief under this section, any employee who may be injured by reason of
34 (~~such~~) the failure, or the representative of (~~such~~) the employees,
35 may bring an action against the director in the superior court for the
36 county in which the danger is alleged to exist for a writ of mandamus
37 to compel the director to seek such an order and for (~~such~~) further

1 relief as may be appropriate or seek the director to exercise his or
2 her restraining authority under RCW 49.17.130.

3 **Sec. 49.** RCW 49.17.180 and 1995 c 403 s 629 are each amended to
4 read as follows:

5 (1) Except as provided in RCW 43.05.090, any employer who willfully
6 or repeatedly violates the requirements of RCW 49.17.060, of any safety
7 or health standard (~~((promulgated under the authority of))~~) adopted under
8 this chapter, of any existing rule (~~((or regulation))~~) governing the
9 conditions of employment (~~((promulgated))~~) adopted by the department, or
10 of any order issued granting a variance under RCW 49.17.080 or
11 49.17.090 may be assessed a civil penalty not to exceed seventy
12 thousand dollars for each violation. A minimum penalty of five
13 thousand dollars shall be assessed for a willful violation.

14 (2) Any employer who has received a citation for a serious
15 violation of the requirements of RCW 49.17.060, of any safety or health
16 standard (~~((promulgated under the authority of))~~) adopted under this
17 chapter, of any existing rule (~~((or regulation))~~) governing the
18 conditions of employment (~~((promulgated))~~) adopted by the department, or
19 of any order issued granting a variance under RCW 49.17.080 or
20 49.17.090 as determined in accordance with subsection (6) of this
21 section, shall be assessed a civil penalty not to exceed seven thousand
22 dollars for each (~~((such))~~) violation.

23 (3) Any employer who has received a citation for a violation of the
24 requirements of RCW 49.17.060, of any safety or health standard
25 (~~((promulgated))~~) adopted under this chapter, of any existing rule (~~((or~~
26 ~~regulation))~~) governing the conditions of employment (~~((promulgated))~~)
27 adopted by the department, or of any order issued granting a variance
28 under RCW 49.17.080 or 49.17.090, where (~~((such))~~) the violation is
29 specifically determined not to be of a serious nature as provided in
30 subsection (6) of this section, may be assessed a civil penalty not to
31 exceed seven thousand dollars for each (~~((such))~~) violation, unless
32 (~~((such))~~) the violation is determined to be de minimis.

33 (4) Any employer who fails to correct a violation for which a
34 citation has been issued under RCW 49.17.120 or 49.17.130 within the
35 period permitted for its correction, which period shall not begin to
36 run until the date of the final order of the board of industrial
37 insurance appeals in the case of any review proceedings under this

1 chapter initiated by the employer in good faith and not solely for
2 delay or avoidance of penalties, may be assessed a civil penalty of not
3 more than seven thousand dollars for each day during which ~~((such))~~ the
4 failure or violation continues.

5 (5) Any employer who violates any of the posting requirements of
6 this chapter, or any of the posting requirements of rules
7 ~~((promulgated))~~ adopted by the department ~~((pursuant to))~~ under this
8 chapter related to employee or employee representative's rights to
9 notice, including but not limited to those employee rights to notice
10 set forth in RCW 49.17.080, 49.17.090, 49.17.120, 49.17.130,
11 49.17.220(1) and 49.17.240(2), shall be assessed a penalty not to
12 exceed seven thousand dollars for each ~~((such))~~ violation. Any
13 employer who violates any of the posting requirements for the posting
14 of informational, educational, or training materials under the
15 authority of RCW 49.17.050(7), may be assessed a penalty not to exceed
16 seven thousand dollars for each ~~((such))~~ violation.

17 (6) For the purposes of this section, a serious violation ~~((shall~~
18 ~~be deemed to))~~ exists in a workplace if there is a substantial
19 probability that death or serious physical harm could result from a
20 condition ~~((which))~~ that exists, or from one or more practices, means,
21 methods, operations, or processes ~~((which))~~ that have been adopted or
22 are in use in ~~((such))~~ the workplace, unless the employer did not, and
23 could not with the exercise of reasonable diligence, know of the
24 presence of the violation.

25 (7) The director, or his or her authorized representatives, ~~((shall~~
26 ~~have authority to))~~ may assess all civil penalties provided in this
27 section, giving due consideration to the appropriateness of the penalty
28 with respect to the number of affected employees of the employer being
29 charged, the gravity of the violation, the size of the employer's
30 business, the good faith of the employer, and the history of previous
31 violations.

32 (8) Civil penalties imposed under this chapter shall be paid to the
33 director for deposit in the supplemental pension fund established by
34 RCW 51.44.033. Civil penalties may be recovered in a civil action in
35 the name of the department brought in the superior court of the county
36 where the violation is alleged to have occurred, or the department may
37 ~~((utilize))~~ use the procedures for collection of civil penalties ~~((as))~~
38 set forth in RCW 51.48.120 through 51.48.150.

1 **Sec. 50.** RCW 49.17.190 and 1986 c 20 s 3 are each amended to read
2 as follows:

3 (1) Any person who gives advance notice of any inspection to be
4 conducted under (~~the authority of~~) this chapter, without the consent
5 of the director or his or her authorized representative, (~~shall, upon~~
6 ~~conviction be~~) is guilty of a gross misdemeanor (~~and be punished~~)
7 punishable by a fine of not more than one thousand dollars or by
8 imprisonment for not more than six months, or by both.

9 (2) Whoever knowingly makes any false statement, representation, or
10 certification in any application, record, report, plan, or other
11 document filed or required to be maintained (~~pursuant to~~) under this
12 chapter (~~shall, upon conviction be~~) is guilty of a gross misdemeanor
13 (~~and be punished~~) punishable by a fine of not more than ten thousand
14 dollars, or by imprisonment for not more than six months, or by both.

15 (3) Any employer who willfully and knowingly violates the
16 requirements of RCW 49.17.060, any safety or health standard
17 (~~promulgated~~) adopted under this chapter, any existing rule (~~or~~
18 ~~regulation~~) governing the safety or health conditions of employment
19 and adopted by the director, or any order issued granting a variance
20 under RCW 49.17.080 or 49.17.090 and that violation caused death to any
21 employee (~~shall, upon conviction be~~) is guilty of a gross misdemeanor
22 (~~and be punished~~) punishable by a fine of not more than one hundred
23 thousand dollars or by imprisonment for not more than six months, or by
24 both(~~; except, that~~). However, if the conviction is for a violation
25 committed after a first conviction of (~~such~~) the person, punishment
26 shall be a fine of not more than two hundred thousand dollars or by
27 imprisonment for not more than one year, or by both.

28 (4) Any employer who has been issued an order immediately
29 restraining a condition, practice, method, process, or means in the
30 workplace, (~~pursuant to~~) under RCW 49.17.130 or 49.17.170, and who
31 nevertheless continues (~~such~~) the condition, practice, method,
32 process, or means, or who continues to use a machine or equipment or
33 part thereof to which a notice prohibiting (~~such~~) the use has been
34 attached, (~~shall be~~) is guilty of a gross misdemeanor(~~, and upon~~
35 ~~conviction shall be punished~~) punishable by a fine of not more than
36 ten thousand dollars or by imprisonment for not more than six months,
37 or by both.

1 (5) Any employer who (~~shall~~) knowingly removes, displaces,
2 damages, or destroys, or causes to be removed, displaced, damaged, or
3 destroyed, any safety device or safeguard required to be present and
4 maintained by any safety or health standard, rule, or order
5 (~~promulgated pursuant to~~) adopted under this chapter, or (~~pursuant~~
6 ~~to~~) under the authority vested in the director under RCW 43.22.050
7 (~~shall, upon conviction, be~~) is guilty of a misdemeanor (~~and be~~
8 ~~punished~~) punishable by a fine of not more than one thousand dollars
9 or by imprisonment for not more than ninety days, or by both.

10 (6) Whenever the director has reasonable cause to believe that any
11 provision of this section defining a crime has been violated by an
12 employer, the director shall cause a record of (~~such~~) the alleged
13 violation to be prepared, a copy of which shall be referred to the
14 prosecuting attorney of the county (~~wherein such~~) where the alleged
15 violation occurred, and the prosecuting attorney of (~~such~~) the county
16 shall in writing advise the director of the disposition he (~~shall~~) or
17 she makes of the alleged violation.

18 **Sec. 51.** RCW 49.17.200 and 1973 c 80 s 20 are each amended to read
19 as follows:

20 All information reported to or otherwise obtained by the director,
21 or (~~his~~) the director's authorized representative, in connection with
22 any inspection or proceeding under (~~the authority of~~) this chapter,
23 (~~which~~) that contains or (~~which~~) that might reveal a trade secret
24 (~~shall be considered~~) is confidential, except that (~~such~~) this
25 information may be disclosed to other officers or employees concerned
26 with carrying out this chapter, or when relevant in any proceeding
27 under this chapter. In any such proceeding the director, the board of
28 industrial insurance appeals, or the court shall issue such orders as
29 may be appropriate to protect the confidentiality of trade secrets.

30 **Sec. 52.** RCW 49.17.210 and 1991 c 89 s 1 are each amended to read
31 as follows:

32 The director (~~is authorized to~~) may conduct, either directly or
33 by grant or contract, research, experiments, and demonstrations as may
34 be of aid and assistance in the furtherance of the objects and purposes
35 of this chapter. Employer identity, employee identity, and personal
36 identifiers of voluntary participants in research, experiments, and

1 demonstrations (~~((shall be deemed))~~) are confidential and (~~((shall))~~) are
2 not (~~((be))~~) open to public inspection. Information obtained from
3 (~~((such))~~) these voluntary activities (~~((shall not be deemed to be))~~) is
4 not medical information for the purpose of RCW 51.36.060 and (~~((shall be~~
5 ~~deemed))~~) is confidential and (~~((shall))~~) not (~~((be))~~) open to public
6 inspection. The director, in his or her discretion, (~~((is authorized~~
7 ~~to))~~) may grant a variance from any rule (~~((or regulation))~~) or portion
8 thereof, whenever he or she determines that (~~((such))~~) a variance is
9 necessary to permit an employer to participate in an experiment
10 approved by the director, and the experiment is designed to demonstrate
11 or validate new and improved techniques to safeguard the health or
12 safety of employees. Any (~~((such))~~) variance shall require that all due
13 regard be given to the health and safety of all employees participating
14 in any experiment.

15 **Sec. 53.** RCW 49.17.220 and 1973 c 80 s 22 are each amended to read
16 as follows:

17 (1) Each employer shall make, keep, and preserve, and make
18 available to the director (~~((such))~~) records regarding his or her
19 activities relating to this chapter as the director may prescribe by
20 (~~((regulation))~~) rule as necessary or appropriate for the enforcement of
21 this chapter or for developing information regarding the causes and
22 prevention of occupational accidents and illnesses. In order to carry
23 out (~~((the provisions of))~~) this section (~~((such regulations))~~), these
24 rules may include provisions requiring employers to conduct periodic
25 inspections. The director shall also (~~((issue regulations))~~) adopt rules
26 requiring that employers, through posting of notices or other
27 appropriate means, keep their employees informed of their protections
28 and obligations under this chapter, including the provisions of
29 applicable safety and health standards.

30 (2) The director shall (~~((prescribe regulations))~~) adopt rules
31 requiring employers to maintain accurate records, and to make periodic
32 reports of work-related deaths, and of injuries and illnesses other
33 than minor injuries requiring only first aid treatment and (~~((which))~~)
34 that do not involve medical treatment, loss of consciousness,
35 restriction of work or motion, or transfer to another job.

36 (3) The director shall (~~((issue regulations))~~) adopt rules requiring
37 employers to maintain accurate records of employee exposures to

1 potentially toxic materials or harmful physical agents (~~((which))~~) that
2 are required to be monitored or measured. (~~((Such regulations))~~) These
3 rules shall provide employees or their representatives with an
4 opportunity to observe (~~((such))~~) the monitoring or measuring, and to
5 have access to (~~((the))~~) their records (~~((thereof))~~). (~~((Such regulations))~~)
6 The rules shall also make appropriate provisions for each employee or
7 former employee to have access to (~~((such))~~) records (~~((as will))~~) that
8 indicate his or her own exposure to toxic materials or harmful physical
9 agents. Each employer shall promptly notify any employee who has been
10 or is being exposed to toxic materials or harmful physical agents in
11 concentrations or at levels (~~((which))~~) that exceed those prescribed by
12 any applicable safety and health standard (~~((promulgated))~~) adopted under
13 this chapter and shall inform any employee who is being thus exposed of
14 the corrective action being taken.

15 **Sec. 54.** RCW 49.17.230 and 1973 c 80 s 23 are each amended to read
16 as follows:

17 The director (~~((is authorized to))~~) may adopt by rule any provision
18 reasonably necessary to enable this state to qualify a state plan under
19 section 18 of the occupational safety and health act of 1970 (~~((Public~~
20 ~~Law))~~) P.L. 91-596, 84 Stat. 1590) to enable this state to assume the
21 responsibility for the development and enforcement of occupational
22 safety and health standards in all workplaces within this state subject
23 to the legislative jurisdiction of the state of Washington. The
24 director (~~((is authorized to))~~) may enter into agreement with the United
25 States and to accept on behalf of the state of Washington grants of
26 funds to implement the development and enforcement of this chapter and
27 the occupational safety and health act of 1970.

28 **Sec. 55.** RCW 49.17.240 and 1973 c 80 s 24 are each amended to read
29 as follows:

30 (1) The director in (~~((the promulgation of))~~) adopting rules under
31 (~~((the authority of))~~) this chapter shall establish safety and health
32 standards for conditions of employment of general (~~((and/or))~~) or
33 specific applicability for all industries, businesses, occupations,
34 crafts, trades, and employments subject to (~~((the provisions of))~~) this
35 chapter, or those that are a national or accepted federal standard. In

1 adopting safety and health standards for conditions of employment, the
2 director shall solicit and give due regard to all recommendations by
3 any employer, employee, or labor representative of employees.

4 (2) Any safety and health standard adopted by rule of the director
5 shall, where appropriate, prescribe the use of labels or other forms of
6 warning to insure that employees are apprised of all hazards to which
7 they may be exposed, relevant symptoms, and appropriate emergency
8 treatment, and proper conditions and precautions of safe use or
9 exposure. Where appropriate, ~~((such))~~ the rules shall ~~((so))~~ prescribe
10 suitable protective equipment and control or technological procedures
11 to be used in connection with ~~((such))~~ the hazards and shall provide
12 for monitoring or measuring employee exposure at ~~((such))~~ the locations
13 and intervals, and in ~~((such))~~ a manner as may be reasonably necessary
14 for the protection of employees. In addition, where appropriate, ~~((any~~
15 ~~such))~~ the rules shall prescribe the type and frequency of medical
16 examinations or other tests ~~((which))~~ that shall be made available, by
17 the employer or at his or her cost, to employees exposed to such
18 hazards in order to most effectively determine whether the health of
19 ~~((such))~~ the employees is adversely affected by ~~((such))~~ the exposure.
20 ~~((In the event that such))~~ If medical examinations are in the nature of
21 research, as determined by the director, ~~((such))~~ the examinations may
22 be furnished at the expense of the department. The results of ~~((such))~~
23 examinations or tests shall be furnished only to the director, other
24 appropriate agencies of government, and at the request of the employee
25 to his or her physician.

26 (3) Whenever the director adopts by rule any safety and health
27 standard he or she may at the same time provide by rule the effective
28 date of ~~((such))~~ the standard, which shall not be less than thirty
29 days, excepting emergency rules, but may be made effective at such time
30 in excess of thirty days from the date of adoption as specified in any
31 rule adopting a safety and health standard. Any rule not made
32 effective thirty days after adoption, having a delayed effectiveness in
33 excess of thirty days, may only be made upon a finding made by the
34 director that ~~((such))~~ delayed effectiveness of the rule is reasonably
35 necessary to afford the affected employers a reasonable opportunity to
36 make changes in methods, means, or practices to meet the requirements
37 of the adopted rule. Temporary orders granting a variance may be

1 utilized by the director in lieu of the delayed effectiveness in the
2 adoption of any rule.

3 **Sec. 56.** RCW 49.17.250 and 1991 c 89 s 2 are each amended to read
4 as follows:

5 (1) In carrying out the responsibilities for the development of a
6 voluntary compliance program under ~~((the authority of))~~ RCW
7 49.17.050(8) and the rendering of advisory and consultative services to
8 employers, the director may grant an employer's application for advice
9 and consultation, and for the purpose of affording such consultation
10 and advice visit the employer's workplace. Such consultation and
11 advice shall be limited to the matters specified in the request
12 affecting the interpretation and applicability of safety and health
13 standards to the conditions, structures, machines, equipment,
14 apparatus, devices, materials, methods, means, and practices in the
15 employer's workplace. The director in granting any requests for
16 consultative or advisory service may provide for an alternative means
17 of affording consultation and advice other than on-site consultation.

18 (2) The director, or an authorized representative, will make
19 recommendations regarding the elimination of any hazards disclosed
20 within the scope of the on-site consultation. No visit to an
21 employer's workplace shall be regarded as an inspection or
22 investigation under ~~((the authority of))~~ this chapter, and no notices
23 or citations shall be issued, nor, shall any civil penalties be
24 assessed upon such visit, nor shall any authorized representative of
25 the director designated to render advice and consult with employers
26 under the voluntary compliance program have any enforcement
27 authority(~~(: PROVIDED, That in the event))~~). If an on-site visit
28 discloses a serious violation of a health and safety standard as
29 defined in RCW 49.17.180(6), and the hazard of ~~((such))~~ the violation
30 is either not abated by the cooperative action of the employer, or, is
31 not subject to being satisfactorily abated by the cooperative action of
32 the employer, the director shall either invoke the administrative
33 restraining authority provided in RCW 49.17.130 or seek the issuance of
34 injunctive process under the authority of RCW 49.17.170 or invoke both
35 ~~((such))~~ remedies.

36 (3) ~~((Nothing in))~~ This section ~~((shall be construed as providing))~~
37 does not provide immunity to any employer who has ~~((made application))~~

1 applied for consultative services during the pendency of the granting
2 of such application from inspections or investigations conducted under
3 RCW 49.17.070 or any inspection conducted as a result of a complaint,
4 nor immunity from inspections under RCW 49.17.070 or inspections
5 resulting from a complaint subsequent to the conclusion of the
6 consultative period. This section (~~((shall not be construed as
7 requiring))~~) does not require an inspection under RCW 49.17.070 of any
8 workplace (~~((which))~~) that has been visited for consultative purposes.
9 However, in the event of a subsequent inspection, the director, or an
10 authorized representative, may in his or her discretion take into
11 consideration any information obtained during the consultation visit of
12 that workplace in determining the nature of an alleged violation and
13 the amount of penalties to be assessed, if any. (~~((Such))~~) Rules (~~((and
14 regulations to be promulgated pursuant to))~~) adopted under this section
15 shall provide that in all instances of serious violations as defined in
16 RCW 49.17.180(6) which are disclosed in any consultative period, shall
17 be corrected within a specified period of time at the expiration of
18 which an inspection will be conducted under (~~((the authority of))~~) RCW
19 49.17.070. All employers requesting consultative services shall be
20 advised of the provisions of this section and the rules adopted by the
21 director relating to the voluntary compliance program. Information
22 obtained by the department as a result of employer-requested
23 consultation and training services (~~((shall be deemed))~~) is confidential
24 and (~~((shall))~~) not (~~((be))~~) open to public inspection. Within thirty days
25 of receipt, the employer shall make voluntary services reports
26 available to employees or their collective bargaining representatives
27 for review. Employers may satisfy the availability requirement by
28 requesting a copy of the reports from the department. The director may
29 provide by rule for the frequency, manner, and method of the rendering
30 of consultative services to employers, and for the scheduling and
31 priorities in granting applications consistent with the availability of
32 personnel, and in (~~((such))~~) a manner as not to jeopardize the
33 enforcement requirements of this chapter.

34 **Sec. 57.** RCW 49.17.260 and 1973 c 80 s 26 are each amended to read
35 as follows:

36 In furtherance of the objects and purposes of this chapter, the
37 director shall develop and maintain an effective program of collection,

1 compilation, and analysis of industrial safety and health statistics.
2 The director, or his or her authorized representative, shall
3 investigate and analyze industrial catastrophes, serious injuries, and
4 fatalities occurring in any workplace subject to this chapter, in an
5 effort to ascertain whether (~~such~~) the injury or fatality occurred as
6 the result of a violation of this chapter, or any safety and health
7 standard, rule, or order (~~promulgated pursuant to~~) adopted under this
8 chapter, or if not, whether a safety and health standard or rule should
9 be (~~promulgated~~) adopted for application to such circumstances. The
10 director shall adopt rules relating to the conducting and reporting of
11 (~~such~~) these investigations. (~~Such~~) The investigative report
12 (~~shall be deemed~~) is confidential and only available upon order of
13 the superior court after notice to the director and an opportunity for
14 hearing(~~(:—PROVIDED, That such)~~). However, investigative reports
15 shall be made available without the necessity of obtaining a court
16 order, to: Employees of governmental agencies in the performance of
17 their official duties(~~(, to)~~); the injured (~~(workman or)~~) worker, his
18 or her legal representative or (~~(his)~~) labor organization
19 representative(~~(, or to)~~); the legal representative or labor
20 organization representative of a deceased (~~(workman)~~) worker who was
21 the subject of an investigation(~~(, or to)~~); the employer of the injured
22 or deceased (~~(workman)~~) worker or any other employer or person whose
23 actions or business operation is the subject of the report of
24 investigation(~~(,)~~); or any attorney representing a party in any pending
25 legal action in which an investigative report constitutes relevant and
26 material evidence in (~~such~~) the legal action.

27 **Sec. 58.** RCW 49.17.270 and 1973 c 80 s 27 are each amended to read
28 as follows:

29 The department (~~shall be~~) is the sole and paramount
30 administrative agency responsible for the administration of (~~the~~
31 ~~provisions of~~) this chapter(~~(, and)~~). Any other agency of the state
32 or any municipal corporation or political subdivision of the state
33 having administrative authority over the inspection, survey,
34 investigation, or any regulatory or enforcement authority of safety and
35 health standards related to the health and safety of employees in any
36 workplace subject to this chapter, (~~shall be required, notwithstanding~~
37 ~~any statute to the contrary, to~~) must exercise (~~such~~) the authority

1 ((as)) provided in this chapter and subject to interagency agreement or
2 agreements with the department made under the authority of the
3 interlocal cooperation act (chapter 39.34 RCW) relative to the
4 procedures to be followed in the enforcement of this chapter(~~(+
5 PROVIDED, That)~~). In relation to employers using or possessing sources
6 of ionizing radiation the department (~~(of labor and industries)~~) and
7 the department of social and health services shall agree upon mutual
8 policies(~~(,)~~) and rules(~~(, and regulations)~~) compatible with
9 policies(~~(,)~~) and rules(~~(, and regulations)~~) adopted (~~(pursuant to)~~)
10 under chapter 70.98 RCW insofar as (~~(such)~~) the policies(~~(,)~~) and
11 rules(~~(, and regulations)~~) are not inconsistent with (~~(the provisions
12 of)~~) this chapter.

13 **Sec. 59.** RCW 49.17.280 and 1996 c 260 s 2 are each amended to read
14 as follows:

15 (1) As used in this section, "federal worker protection standard"
16 or "federal standard" means the worker protection standard for
17 agricultural workers and handlers of agricultural pesticides adopted by
18 the United States environmental protection agency in 40 C.F.R., part
19 170 as it exists on June 6, 1996.

20 (2)(a) No rule adopted under this chapter may impose requirements
21 that make compliance with the federal worker protection standard
22 impossible.

23 (b) The department shall adopt by rule safety and health standards
24 that are at least as effective as the federal standard. Standards
25 adopted by the department under this section shall be adopted in
26 coordination with the department of agriculture.

27 (3) If a violation of the federal worker protection standard, or of
28 state rules regulating activities governed by the federal standard, is
29 investigated by the department and by the department of agriculture,
30 the agencies shall conduct a joint investigation if feasible, and shall
31 share relevant information. However, an investigation conducted by the
32 department under Title 51 RCW solely with regard to industrial
33 insurance (~~(shall not be considered to be)~~) is not an investigation by
34 the department for this purpose. The agencies shall not issue
35 duplicate citations to an individual or business for the same violation
36 of the federal standard or state rules regulating activities governed
37 by the federal standard. (~~(By December 1, 1996,)~~) The department and

1 the department of agriculture shall jointly establish a formal
2 agreement that: Identifies the roles of each of the two agencies in
3 conducting investigations of activities governed by the federal
4 standard; and provides for protection of workers and enforcement of
5 standards that is at least as effective as provided to all workers
6 under this chapter. The department's role under the agreement shall
7 not extend beyond protection of safety and health in the workplace as
8 provided under this chapter.

9 **Sec. 60.** RCW 49.17.285 and 2004 c 272 s 1 are each amended to read
10 as follows:

11 Employers whose employees receive medical monitoring under chapter
12 296-307 WAC, Part J-1, shall submit records to the department (~~of~~
13 ~~labor and industries~~) each month indicating the name of each worker
14 tested, the number of hours that each worker handled covered pesticides
15 during the thirty days (~~prior to~~) before testing, and the number of
16 hours that each worker handled covered pesticides during the current
17 calendar year. The department (~~of labor and industries~~) shall work
18 with the department of health to correlate this data with each
19 employee's test results. (~~No later than January 1, 2005,~~) The
20 department of labor and industries shall require employers to report
21 this data to the physician or other licensed health care professional
22 and department of health public health laboratory or other approved
23 laboratory when each employee's cholinesterase test is taken. The
24 department shall also require employers to provide each employee who
25 receives medical monitoring with: (1) A copy of the data that the
26 employer reports for that employee upon that employee's request; and
27 (2) access to the records on which the employer's report is based.

28 **Sec. 61.** RCW 49.17.300 and 1998 c 37 s 3 are each amended to read
29 as follows:

30 (~~By December 1, 1998,~~) The department (~~of labor and industries~~)
31 shall adopt rules requiring electricity in all temporary worker housing
32 and establishing minimum requirements to ensure the safe storage,
33 handling, and preparation of food in these camps, regardless of whether
34 individual or common cooking facilities are in use.

1 **Sec. 62.** RCW 49.17.320 and 1999 c 374 s 4 are each amended to read
2 as follows:

3 (~~By December 1, 1999,~~) The department and the department of
4 health shall jointly establish a formal agreement that identifies the
5 roles of each of the two agencies with respect to the enforcement of
6 temporary worker housing operation standards.

7 The agreement shall, to the extent feasible, provide for inspection
8 and enforcement actions by a single agency, and shall include measures
9 to avoid multiple citations for the same violation.

10 For the purposes of this section, "temporary worker housing" has
11 the same meaning as provided in RCW 70.114A.020.

12 **Sec. 63.** RCW 49.17.350 and 2000 c 239 s 2 are each amended to read
13 as follows:

14 (1) The director (~~of the department of labor and industries~~)
15 shall adopt permanent rules (~~that take effect no later than March 1,~~
16 ~~2001,~~) revising (~~any~~) safety standards governing flaggers.

17 (2) The transportation commission shall adopt permanent rules
18 (~~that take effect no later than March 1, 2001,~~) revising (~~any~~)
19 safety standards governing flaggers.

20 (3) The utilities and transportation commission shall adopt
21 permanent rules (~~that take effect no later than March 1, 2001,~~)
22 revising (~~any~~) safety standards and employment qualifications
23 governing flaggers.

24 (4) The (~~permanent~~) rules adopted (~~pursuant to~~) under this
25 section shall be designed to improve options available to ensure the
26 safety of flaggers, ensure that flaggers have adequate visual warning
27 of objects approaching from behind them, and, with respect to the
28 utilities and transportation commission rules, update employment
29 qualifications for flaggers.

30 (5) In developing (~~permanent~~) rules adopted (~~pursuant to~~) under
31 this section, state agencies and commissions shall consult with other
32 persons with an interest in improving safety standards and updating
33 employment qualifications for flaggers. State agencies and commissions
34 shall coordinate and make consistent, to the extent possible, permanent
35 rules. (~~State agencies and commissions shall report, by April 22,~~
36 ~~2001, to the senate labor and workforce development committee and the~~

1 ~~house of representatives commerce and labor committee on the permanent~~
2 ~~rules adopted pursuant to this section.))~~

3 **Sec. 64.** RCW 49.19.020 and 1999 c 377 s 3 are each amended to read
4 as follows:

5 (1) ~~((By July 1, 2000,))~~ Each health care setting shall develop and
6 implement a plan to reasonably prevent and protect employees from
7 violence at the setting. The plan shall address security
8 considerations related to the following items, as appropriate to the
9 particular setting, based upon the hazards identified in the assessment
10 required under subsection (2) of this section:

- 11 (a) The physical attributes of the health care setting;
- 12 (b) Staffing, including security staffing;
- 13 (c) Personnel policies;
- 14 (d) First aid and emergency procedures;
- 15 (e) The reporting of violent acts; and
- 16 (f) Employee education and training.

17 (2) Before the development of the plan required under subsection
18 (1) of this section, each health care setting shall conduct a security
19 and safety assessment to identify existing or potential hazards for
20 violence and determine the appropriate preventive action to be taken.
21 The assessment shall include, but is not limited to, a measure of the
22 frequency of, and an identification of the causes for and consequences
23 of, violent acts at the setting during at least the preceding five
24 years or for the years records are available for assessments involving
25 home health, hospice, and home care agencies.

26 (3) In developing the plan required by subsection (1) of this
27 section, the health care setting may consider any guidelines on
28 violence in the workplace or in health care settings issued by the
29 department of health, the department of social and health services, the
30 department of labor and industries, the federal occupational safety and
31 health administration, medicare, and health care setting accrediting
32 organizations.

33 **Sec. 65.** RCW 49.19.030 and 1999 c 377 s 4 are each amended to read
34 as follows:

35 ~~((By July 1, 2001, and))~~ On a regular basis ~~((thereafter))~~, as set
36 forth in the plan developed under RCW 49.19.020, each health care

1 setting shall provide violence prevention training to all its affected
2 employees as determined by the plan. The training shall occur within
3 ninety days of the employee's initial hiring date unless he or she is
4 a temporary employee. For temporary employees, training would take
5 into account unique circumstances. The training may vary by the plan
6 and may include, but is not limited to, classes, videotapes, brochures,
7 verbal training, or other verbal or written training that is determined
8 to be appropriate under the plan. The training shall address the
9 following topics, as appropriate to the particular setting and to the
10 duties and responsibilities of the particular employee being trained,
11 based upon the hazards identified in the assessment required under RCW
12 49.19.020:

- 13 (1) General safety procedures;
- 14 (2) Personal safety procedures;
- 15 (3) The violence escalation cycle;
- 16 (4) Violence-predicting factors;
- 17 (5) Obtaining patient history from a patient with violent behavior;
- 18 (6) Verbal and physical techniques to de-escalate and minimize
19 violent behavior;
- 20 (7) Strategies to avoid physical harm;
- 21 (8) Restraining techniques;
- 22 (9) Appropriate use of medications as chemical restraints;
- 23 (10) Documenting and reporting incidents;
- 24 (11) The process whereby employees affected by a violent act may
25 debrief;
- 26 (12) Any resources available to employees for coping with violence;
- 27 and
- 28 (13) The health care setting's workplace violence prevention plan.

29 **Sec. 66.** RCW 49.19.040 and 1999 c 377 s 5 are each amended to read
30 as follows:

31 ~~((Beginning no later than July 1, 2000,))~~ Each health care setting
32 shall keep a record of any violent act against an employee, a patient,
33 or a visitor occurring at the setting. At a minimum, the record shall
34 include:

- 35 (1) The health care setting's name and address;
- 36 (2) The date, time, and specific location at the health care
37 setting where the act occurred;

1 (3) The name, job title, department or ward assignment, and staff
2 identification or social security number of the victim if an employee;
3 (4) A description of the person against whom the act was committed
4 as:
5 (a) A patient;
6 (b) A visitor;
7 (c) An employee; or
8 (d) Other;
9 (5) A description of the person committing the act as:
10 (a) A patient;
11 (b) A visitor;
12 (c) An employee; or
13 (d) Other;
14 (6) A description of the type of violent act as a:
15 (a) Threat of assault with no physical contact;
16 (b) Physical assault with contact but no physical injury;
17 (c) Physical assault with mild soreness, surface abrasions,
18 scratches, or small bruises;
19 (d) Physical assault with major soreness, cuts, or large bruises;
20 (e) Physical assault with severe lacerations, a bone fracture, or
21 a head injury; or
22 (f) Physical assault with loss of limb or death;
23 (7) An identification of any body part injured;
24 (8) A description of any weapon used;
25 (9) The number of employees in the vicinity of the act when it
26 occurred; and
27 (10) A description of actions taken by employees and the health
28 care setting in response to the act. Each record shall be kept for at
29 least five years following the act reported, during which time it shall
30 be available for inspection by the department upon request.

31 **Sec. 67.** RCW 49.22.010 and 1989 c 357 s 1 are each amended to read
32 as follows:

33 (~~As used in this chapter, the following terms have the meanings~~
34 ~~indicated~~) The definitions in this section apply throughout this
35 chapter unless the context clearly requires otherwise.

36 (1) "Department" means the department of labor and industries.

1 (2) "Late night retail establishment" means any business or
2 commercial establishment making sales to the public between the hours
3 of eleven o'clock p.m. and six o'clock a.m., except restaurants,
4 hotels, taverns, or any lodging facility.

5 (3) "Employer" means the operator, lessee, or franchisee of a late
6 night retail establishment.

7 **Sec. 68.** RCW 49.22.020 and 1989 c 357 s 3 are each amended to read
8 as follows:

9 (~~In addition to providing crime prevention training as provided in~~
10 ~~section 2 of this act,~~) All employers operating late night retail
11 establishments shall:

12 (1) Post a conspicuous sign in the window or door (~~which~~) that
13 states (~~that~~) there is a safe on the premises and it is not
14 accessible to the employees on the premises and that the cash register
15 contains only the minimal amount of cash needed to conduct business(~~+~~
16 ~~PROVIDED, That~~). An employer (~~shall not be~~) is not subject to
17 penalties under RCW 49.22.030 for having money(~~s~~) in the cash
18 register in excess of the minimal amount needed to conduct business;

19 (2) (~~So~~) Arrange all material posted in the window or door so as
20 to provide a clear and unobstructed view of the cash register, provided
21 the cash register is otherwise in a position visible from the street;

22 (3) Have a drop-safe, limited access safe, or comparable device on
23 the premises; and

24 (4) Operate the outside lights for that portion of the parking area
25 that is necessary to accommodate customers during all night hours the
26 late night retail establishment is open, if the late night retail
27 establishment has a parking area for its customers.

28 **Sec. 69.** RCW 49.24.010 and 1937 c 131 s 1 are each amended to read
29 as follows:

30 (~~The term~~) For the purposes of this chapter, "pressure" means
31 gauge air pressure in pounds per square inch.

32 **Sec. 70.** RCW 49.24.020 and 1937 c 131 s 2 are each amended to read
33 as follows:

34 Every employer of persons for work in compressed air shall:

1 (1) Connect at least two air pipes with the working chamber and
2 keep such pipes in perfect working condition;

3 (2) Attach to the working chamber in accessible positions all
4 instruments necessary to show its pressure and keep ~~((such))~~ the
5 instruments in charge of competent persons, with a period of duty for
6 each ~~((such))~~ person not exceeding six hours in any twenty-four;

7 (3) Place in each shaft a safe ladder extending its entire length;

8 (4) Light properly and keep the passageway clear ~~((such~~
9 ~~passageway))~~;

10 (5) Provide independent lighting systems for the working chamber
11 and shaft leading to it, when electricity is used for lighting;

12 (6) Guard lights other than electric lights;

13 (7) Protect ~~((workmen))~~ workers by a shield erected in the working
14 chamber when ~~((such))~~ the chamber is less than ten feet long and is
15 suspended with more than nine feet space between its deck and the
16 bottom of the excavation;

17 (8) Provide for and keep accessible to employees working in
18 compressed air a dressing room heated, lighted, and ventilated properly
19 and supplied with benches, lockers, sanitary waterclosets, bathing
20 facilities, and hot and cold water; and

21 (9) Establish and maintain a medical lock properly heated, lighted,
22 ventilated, and supplied with medicines and surgical implements, when
23 the maximum air pressure exceeds seventeen pounds.

24 **Sec. 71.** RCW 49.24.040 and 1937 c 131 s 4 are each amended to read
25 as follows:

26 If an employee is a new employee, an absentee for ten or more
27 successive days, an employee who has worked in compressed air
28 continuously for three months or a beginner in compressed air who has
29 worked but a single ~~((shaft [shift] as required by RCW 49.24.050))~~
30 shift, the officer required by RCW 49.24.030(1) shall examine ~~((him))~~
31 the employee and declare him or her physically fit to work in
32 compressed air before permitting ~~((him))~~ the employee to enter or
33 reenter the working chamber. Excessive users of intoxicants shall not
34 be permitted to work in compressed air.

35 **Sec. 72.** RCW 49.24.060 and 1937 c 131 s 7 are each amended to read
36 as follows:

1 Violation of or noncompliance with any provision of (~~this~~
2 ~~article~~) RCW 49.24.010 through 49.24.070 by any employer, manager,
3 superintendent, (~~foreman~~) foreperson, or other person having
4 direction or control of (~~such~~) the work (~~shall be~~) is a gross
5 misdemeanor punishable by a fine of not less than two hundred (~~and~~)
6 fifty dollars or by imprisonment for not more than one year, or by both
7 (~~such~~) a fine and imprisonment.

8 **Sec. 73.** RCW 49.24.070 and 1994 c 164 s 23 are each amended to
9 read as follows:

10 The director of labor and industries shall (~~have the power and it~~
11 ~~shall be the director's duty to~~) enforce the provisions of RCW
12 49.24.010 through 49.24.070. Any authorized inspector or agent of the
13 department may issue and serve upon the employer or person in charge of
14 (~~such~~) the work, an order requiring compliance with (~~a special~~) any
15 provision (~~or specific provisions~~) of RCW 49.24.010 through 49.24.070
16 and directing the discontinuance of any employment of persons in
17 compressed air in connection with (~~such~~) the work until (~~such~~
18 ~~specific~~) the provision (~~or provisions have~~) has been complied with
19 by (~~such~~) the employer to the satisfaction of the department.

20 **Sec. 74.** RCW 49.24.080 and 1973 1st ex.s. c 154 s 89 are each
21 amended to read as follows:

22 Every person, firm, or corporation constructing, building, or
23 operating a tunnel, quarry, caisson, or subway, excepting in connection
24 with mines, with or without compressed air, shall in the employment of
25 any labor comply with the following safety provisions:

26 (1) A safety miner shall be selected by the crew on each shift who
27 shall check the conditions necessary to make the (~~working place~~)
28 workplace safe; such as loose rock, faulty timbers, poor rails, lights,
29 ladders, scaffolds, fan pipes, and firing lines.

30 (2) Ventilating fans shall be installed from twenty-five to one
31 hundred feet outside the portal.

32 (3) No employee shall be allowed to "bar down" without the
33 assistance of another employee.

34 (4) No employee shall be permitted to return to the heading until
35 at least thirty minutes after blasting.

1 (5) Whenever persons are employed in wet places, the employer shall
2 furnish (~~such~~) those persons with rubbers, boots, coats, and hats.
3 All boots if worn previously by an employee shall be sterilized before
4 being furnished to another(~~(: PROVIDED, That)~~). RCW 49.24.080 through
5 49.24.380 (~~shall~~) do not apply to the operation of a railroad except
6 that new construction of tunnels, caissons, or subways in connection
7 therewith (~~shall be~~) are subject to (~~the provisions of~~) RCW
8 49.24.080 through 49.24.380(~~(: PROVIDED, FURTHER, That in the event~~
9 ~~of)~~). If repair work is being done in a railroad tunnel, no person
10 shall be compelled to perform labor until the air has been cleared of
11 smoke, gas, and fumes.

12 **Sec. 75.** RCW 49.24.150 and 1941 c 194 s 8 are each amended to read
13 as follows:

14 When locking explosives and detonators into the air chamber, they
15 shall be kept at opposite ends of the lock. While explosives and
16 detonators are being taken through, no (~~men~~) persons other than the
17 lock tender and the carriers (~~shall be~~) are permitted in the lock.

18 **Sec. 76.** RCW 49.24.170 and 1941 c 194 s 10 are each amended to
19 read as follows:

20 When electric power is used for running compressors supplying air
21 for compressed air tunnel work and (~~such~~) the power is purchased from
22 a local central station or power company(~~(—)~~);

23 (1) There shall be two or more sources of power from the power
24 company's stations to the compressor plant. (~~Such~~) The power feeders
25 shall each have a capacity large enough to carry the entire compressor
26 plant load and normal overload. The feeders shall preferably run from
27 separate generating plants or substations and be carried to the
28 compressor plant over separate routes and not through the same duct
29 lines and manholes so that the breakdown of one feeder shall not cause
30 an interruption on the other feeder(~~(-)~~);

31 (2) There shall be duplicate feeder bus-bars, and feeder
32 connections to the bus-bars shall be such that either feeder can feed
33 to each separate bus-bar set, individually, or simultaneously to both
34 sets(~~(-)~~);

35 (3) There shall be at least two compressors so connected to the
36 bus-bars that they can be operated from either set of busses. The

1 compressors shall be fed from different bus-bar sets, in such a way
2 that a breakdown of a feeder or bus-bar would interrupt the operation
3 of only part of the compressor plant(~~(-)~~); and

4 (4) Duplicate air feed pipes shall be provided from the compressor
5 plant to a point beyond the lock.

6 **Sec. 77.** RCW 49.24.180 and 1941 c 194 s 11 are each amended to
7 read as follows:

8 While work is in progress, the employer shall employ a competent
9 person who shall make a regular inspection at least once every working
10 day of all engines, boilers, steam pipes, drills, air pipes, air
11 gauges, air locks, dynamos, electric wiring, signaling apparatus,
12 brakes, cages, buckets, hoists, cables, ropes, timbers, supports, and
13 all other apparatus and appliances; and he or she shall immediately
14 upon discovery of any defect, report (~~(same)~~) the defect in writing to
15 the employer, or his or her agent in charge.

16 **Sec. 78.** RCW 49.24.190 and 1941 c 194 s 12 are each amended to
17 read as follows:

18 No employee shall ride on any loaded car, cage, or bucket, nor walk
19 up or down any incline or shaft while any car, cage, or bucket is above
20 him or her.

21 **Sec. 79.** RCW 49.24.220 and 1941 c 194 s 15 are each amended to
22 read as follows:

23 (1) No greater quantity of explosives than that which is required
24 for immediate use shall be taken into the working chamber.

25 (2) Explosives shall be conveyed in a suitable covered wooden box.

26 (3) Detonators shall be conveyed in a separate covered wooden box.

27 (4) Explosives and detonators shall be taken separately into the
28 caissons.

29 (5) After blasting is completed, all explosives and detonators
30 shall be returned at once to the magazine.

31 (6) No naked light shall be used in the vicinity of open chests or
32 magazines containing explosives, nor near where a charge is being
33 primed.

34 (7) No tools or other articles shall be carried with the explosives
35 or with the detonators.

1 (8) All power lines and electric light wires shall be disconnected
2 at a point outside the blasting switch before the loading of holes. No
3 current by grounding of power or bonded rails (~~shall be~~) is allowed
4 beyond blasting switch after explosives are taken in preparatory to
5 blasting, and under no circumstances shall grounded current be used for
6 exploding blasts.

7 (9) Before drilling is commenced on any shift, all remaining holes
8 shall be examined with a wooden stick for unexploded charges or
9 cartridges, and if any are found, (~~same~~) they shall be refired before
10 work proceeds.

11 (10) No person (~~shall be~~) is allowed to deepen holes that have
12 previously contained explosives.

13 (11) All wires in broken rock shall be carefully traced and search
14 made for unexploded cartridges.

15 (12) Whenever blasting is being done in a tunnel, at points liable
16 to break through to where other (~~men~~) persons are at work, the
17 (~~foreman or~~) person in charge shall, before any holes are loaded,
18 give warning of danger to all persons that may be working where the
19 blasts may break through, and he or she shall not allow any holes to be
20 charged until warning is acknowledged and (~~men~~) persons are removed.

21 (13) Blasters when testing circuit through charged holes shall use
22 sufficient leading wires to be at a safe distance and shall use only
23 approved types of galvanometers. No tests of circuits in charged holes
24 shall be made until (~~men~~) persons are removed to a safe distance.

25 (14) No blasts shall be fired with a fuse, except an electrically
26 ignited fuse, in vertical or steep shafts.

27 (15) In shaft sinking where the electric current is used for
28 firing, a separate switch not controlling any electric lights must be
29 used for blasting and proper safeguards similar to those in tunnels
30 must be followed in order to (~~insure~~) ensure against premature
31 firing.

32 **Sec. 80.** RCW 49.24.230 and 1941 c 194 s 16 are each amended to
33 read as follows:

34 (1) When firing by electricity from power or lighting wires, a
35 proper switch shall be furnished with lever down when "off."

36 (2) The switch shall be fixed in a locked box to which no person
37 (~~shall have~~) has access except the blaster. There shall be provided

1 flexible leads or connecting wires not less than five feet in length
2 with one end attached to the incoming lines and the other end provided
3 with plugs that can be connected to an effective ground. After
4 blasting, the switch lever shall be pulled out, the wires disconnected,
5 and the box locked before any person (~~shall be~~) is allowed to return,
6 and shall remain (~~se~~) locked until again ready to blast.

7 (3) In the working chamber all electric light wires shall be
8 provided with a disconnecting switch, which must be thrown to
9 disconnect all current from the wires in the working chamber before
10 electric light wires are removed or the charge exploded.

11 (4) Before blasting the blaster shall cause a sufficient warning to
12 be sounded and shall compel all persons to retreat to a safe shelter,
13 before he or she sets off the blast, and shall permit no one to return
14 until conditions are safe.

15 **Sec. 81.** RCW 49.24.250 and 1941 c 194 s 18 are each amended to
16 read as follows:

17 (1) Any code of signals used shall be printed and copies thereof,
18 in (~~such~~) languages as may be necessary to be understood by all
19 persons affected thereby, shall be kept posted in a conspicuous place
20 near entrances to workplaces and in (~~such~~) other places as may be
21 necessary to bring them to the attention of all persons affected
22 thereby.

23 (2) Effective and reliable signaling devices shall be maintained at
24 all times to give instant communication between the bottom and top of
25 the shaft.

26 **Sec. 82.** RCW 49.24.260 and 1941 c 194 s 19 are each amended to
27 read as follows:

28 (1) All shafting used in pneumatic caissons shall be provided with
29 ladders, which are to be kept clear and in good condition at all times.
30 The distance between the centers of the rungs of a ladder shall not
31 exceed fourteen inches and shall not vary more than one inch in any one
32 piece of shafting. The length of the ladder rungs shall not be less
33 than nine inches. The rungs of the ladder shall in no case be less
34 than three inches from the wall or other obstruction in the shafting or
35 opening in which the ladder (~~shall be~~) is used. Under no

1 circumstances shall a ladder inclining backward from the vertical be
2 installed. A suitable ladder shall be provided from the top of all
3 locks to the surface.

4 (2) All man shafts shall be lighted at a distance of every ten feet
5 with a guarded incandescent lamp.

6 (3) All outside caisson air locks shall be provided with a platform
7 not less than forty-two inches wide, and provided with a guard rail
8 forty-two inches high.

9 (4) All caissons in which fifteen or more (~~men~~) workers are
10 employed shall have two locks, one of which shall be used as a man
11 lock. Man locks and man shafts shall be in charge of a (~~man whose~~
12 ~~duty it shall be to~~) worker who must operate (~~said~~) the lock and
13 shaft. All caissons more than ten feet in diameter shall be provided
14 with a separate man shaft, which shall be kept clear and in operating
15 order at all times.

16 (5) Locks shall be so located that the distance between the bottom
17 door and water level (~~shall be~~) is not less than three feet.

18 **Sec. 83.** RCW 49.24.290 and 1941 c 194 s 22 are each amended to
19 read as follows:

20 (1) In all shafts where (~~men~~) workers are hoisted or lowered, an
21 iron-bonneted cage shall be used for the conveyance of (~~men~~) workers,
22 but this provision shall not apply to shafts in the process of sinking
23 or during the dismantling of the shaft after work in the tunnel is
24 substantially completed.

25 (2) Cages shall be provided with bonnets consisting of two steel
26 plates not less than three-sixteenths of an inch in thickness, sloping
27 toward each side and so arranged that they may be readily pushed upward
28 to afford egress to persons therein, and (~~such~~) the bonnet shall
29 cover the top of the cage in (~~such~~) a manner as to protect persons in
30 the cage from falling objects.

31 (3) Cages shall be entirely enclosed on two sides with solid
32 partition or wire mesh not less than No. 8 U.S. Standard gauge, no
33 opening in which shall exceed two inches.

34 (4) Cages shall be provided with hanging chains or other similar
35 devices for hand holds.

36 (5) Every cage shall be provided with an approved safety catch of

1 sufficient strength to hold the cage with its maximum load at any point
2 in the shaft.

3 (6) All parts of the hoisting apparatus, cables, brakes, guides,
4 and fastenings shall be of the most substantial design and shall be
5 arranged for convenient inspection. The efficiency of all safety
6 devices shall be established by satisfactory tests before the cages are
7 put into service and at least once every three months thereafter and a
8 record thereof kept.

9 (7) The test of the safety catch shall consist of releasing the
10 cage suddenly in such manner that the safety catches shall have
11 opportunity to grip the guides.

12 **Sec. 84.** RCW 49.24.310 and 1941 c 194 s 24 are each amended to
13 read as follows:

14 Where tunnels are driven from shafts more than two hundred (~~and~~)
15 fifty feet deep, a telephone system shall be established and
16 maintained, communicating with the surface at each (~~such~~) shaft, and
17 with a station or stations readily and quickly accessible to the
18 (~~men~~) workers at the working level.

19 **Sec. 85.** RCW 49.24.320 and 1941 c 194 s 25 are each amended to
20 read as follows:

21 (1) While work is in progress, tunnels, stairways, ladderways,
22 and all places on the surface where work is being conducted, shall be
23 properly lighted. In shafts more than one hundred feet deep, the shaft
24 below that point shall be lighted.

25 (2) All places where hoisting, pumping,
26 or other machinery is erected and in the proximity of which persons are working or moving
27 about, shall be so lighted when the machine is in operation that the
28 moving parts of (~~such~~) the machine can be clearly distinguished.

29 **Sec. 86.** RCW 49.24.330 and 1941 c 194 s 26 are each amended to
30 read as follows:

31 The frames and bed plates of generators, transformers,
32 compensators, rheostats,
33 and motors installed underground shall be effectively grounded. All metallic coverings, armoring of cables,
34 other than trailing cables, and the neutral wire of three-wire systems
35 shall also be so grounded.

1 **Sec. 87.** RCW 49.24.340 and 1941 c 194 s 27 are each amended to
2 read as follows:

3 In electrical systems installed, no higher voltage than low voltage
4 shall be used underground, except for transmission or other application
5 to transformers, motors, generators, or other apparatus in which the
6 whole of the medium or high voltage apparatus is stationary.

7 **Sec. 88.** RCW 49.24.370 and 1941 c 194 s 32 are each amended to
8 read as follows:

9 The director of labor and industries shall establish (~~such~~) rules
10 (~~and regulations as he deems primarily~~) necessary for the safety of
11 the employees employed in tunnels, quarries, caissons, and subways and
12 shall be guided by the most modern published studies and researches
13 made by persons or institutions into the correction of the evils
14 chargeable to improper safeguards and inspection of the tools,
15 machinery, equipment, and places of work obtaining in the industries
16 covered by RCW 49.24.080 through 49.24.380.

17 **Sec. 89.** RCW 49.26.010 and 1973 c 30 s 1 are each amended to read
18 as follows:

19 Air-borne asbestos dust and particles, such as those from sprayed
20 asbestos slurry, asbestos-coated ventilating ducts, and certain other
21 applications of asbestos are known to produce irreversible lung damage
22 and bronchogenic carcinoma. One American of every four dying in urban
23 areas of the United States has asbestos particles or dust in his or her
24 lungs. The nature of this problem is such as to constitute a hazard to
25 the public health and safety, and should be brought under appropriate
26 regulation.

27 **Sec. 90.** RCW 49.26.013 and 1995 c 218 s 1 are each amended to read
28 as follows:

29 (1)(a) Any owner or owner's agent who allows or authorizes any
30 construction, renovation, remodeling, maintenance, repair, or
31 demolition project (~~which~~) that has a reasonable possibility, as
32 defined by the department, of disturbing or releasing asbestos into the
33 air, shall perform or cause to be performed, using practices approved
34 by the department, a good faith inspection to determine whether the

1 proposed project will disturb or release any material containing
2 asbestos into the air.

3 ((Such)) (b) Inspections shall be conducted by persons meeting the
4 accreditation requirements of the federal toxics substances control
5 act, section 206(a)(1) and (3) (15 U.S.C. 2646(a)(1) and (3)).

6 (c) An inspection under this section is not required if the owner
7 or owner's agent is reasonably certain that asbestos will not be
8 disturbed or assumes that asbestos will be disturbed by a project
9 ((which)) that involves construction, renovation, remodeling,
10 maintenance, repair, or demolition and takes the maximum precautions as
11 specified by all applicable federal and state requirements.

12 (2) Except as provided in RCW 49.26.125, the owner or owner's agent
13 shall prepare and maintain a written report describing each inspection,
14 or a statement of assumption of the presence or reasonable certainty of
15 the absence of asbestos, and shall provide a copy of the written report
16 or statement to all contractors before they apply or bid on work. In
17 addition, upon written or oral request, the owner or owner's agent
18 shall make a copy of the written report available to: ((+1)) (a) The
19 department ((of labor and industries)); ((+2)) (b) contractors; and
20 ((+3)) (c) the collective bargaining representatives or employee
21 representatives, if any, of employees who may be exposed to any
22 asbestos or material containing asbestos. A copy shall be posted as
23 prescribed by the department in a place that is easily accessible to
24 ((such)) the employees.

25 **Sec. 91.** RCW 49.26.016 and 1995 c 218 s 2 are each amended to read
26 as follows:

27 (1) Any owner or owner's agent who allows the start of any
28 construction, renovation, remodeling, maintenance, repair, or
29 demolition without first (a) conducting the inspection and preparing
30 and maintaining the report of the inspection, or preparing and
31 maintaining a statement of assumption of the presence or reasonable
32 certainty of the absence of asbestos, as required under RCW 49.26.013;
33 and (b) preparing and maintaining the additional written description of
34 the project as required under RCW 49.26.120 ((shall be)) is subject to
35 a mandatory fine of not less than two hundred fifty dollars for each
36 violation. Each day the violation continues ((shall be)) is considered
37 a separate violation. In addition, any construction, renovation,

1 remodeling, maintenance, repair, or demolition (~~which~~) that was
2 started without meeting the requirements of RCW 49.26.013 and 49.26.120
3 shall be halted immediately and cannot be resumed before meeting
4 (~~such~~) the requirements.

5 (2) No contractor may commence any construction, renovation,
6 remodeling, maintenance, repair, or demolition project without
7 receiving the copy of the written report or statement from the owner or
8 the owner's agent. Any contractor who begins any project without the
9 copy of the written report or statement (~~shall be~~) is subject to a
10 mandatory fine of not less than two hundred (~~and~~) fifty dollars per
11 day. Each day the violation continues (~~shall be~~) is considered a
12 separate violation.

13 (3) The certificate of any certified asbestos contractor who
14 knowingly violates any provision of this chapter or any rule adopted
15 under this chapter shall be revoked for a period of not less than six
16 months.

17 (4) The penalties imposed in this section are in addition to any
18 penalties under RCW 49.26.140.

19 **Sec. 92.** RCW 49.26.020 and 1973 c 30 s 2 are each amended to read
20 as follows:

21 Standards regulating the use of asbestos in construction or
22 manufacturing shall be established by the director (~~of the department~~
23 ~~of labor and industries~~), with the advice of the state health officer
24 and the department of ecology. Standards to be adopted shall describe
25 the types of asbestos that may be used in construction and
26 manufacturing, the methods and procedures for their use, and (~~such~~)
27 other requirements (~~as may be~~) needed to protect the public health
28 and safety with respect to air-borne asbestos particles and asbestos
29 dust.

30 **Sec. 93.** RCW 49.26.030 and 1973 c 30 s 3 are each amended to read
31 as follows:

32 Products containing asbestos shall be stored in containers of types
33 approved by the director (~~of the department of labor and industries~~),
34 with the advice of the state health officer and the department of
35 ecology. Containers of asbestos shall be plainly marked "Asbestos--do
36 not inhale" or other words to the same effect.

1 state when the prior training is shown to be substantially similar to
2 the training required by the department. Nothing shall prevent the
3 department from requiring (~~such~~) individuals to take an examination
4 or refresher course before certification.

5 (4)(a) The department may deny, suspend, or revoke a certificate,
6 as provided under RCW 49.26.140, for failure of the holder to comply
7 with any requirement of this chapter or chapter 49.17 RCW, or any rule
8 adopted under those chapters, or applicable health and safety standards
9 and regulations. In addition to any penalty imposed under RCW
10 49.26.016, the department may suspend or revoke any certificate issued
11 under this chapter for a period of not less than six months upon the
12 following grounds:

13 (~~(a)~~) (i) The certificate was obtained through error or fraud; or
14 (~~(b)~~) (ii) The holder thereof is judged to be incompetent to
15 carry out the work for which the certificate was issued.

16 (b) Before any certificate may be denied, suspended, or revoked,
17 the holder thereof shall be given written notice of the department's
18 intention to do so, mailed by registered mail, return receipt
19 requested, to the holder's last known address. The notice shall
20 enumerate the allegations against such holder, and shall give him or
21 her the opportunity to request a hearing before the department. At
22 (~~such~~) the hearing, the department and the holder shall have
23 opportunity to produce witnesses and give testimony.

24 (5) A denial, suspension, or revocation order may be appealed to
25 the board of industrial insurance appeals within fifteen working days
26 after the denial, suspension, or revocation order is entered. The
27 notice of appeal may be filed with the department or the board of
28 industrial insurance appeals. The board of industrial insurance
29 appeals shall hold the hearing in accordance with procedures
30 established in RCW 49.17.140. Any party aggrieved by an order of the
31 board of industrial insurance appeals may obtain superior court review
32 in the manner provided in RCW 49.17.150.

33 (6) Each person certified under this chapter shall display, upon
34 the request of an authorized representative of the department, valid
35 identification issued by the department.

36 **Sec. 96.** RCW 49.26.115 and 1995 c 218 s 5 are each amended to read
37 as follows:

1 Before working on an asbestos abatement project, a contractor shall
2 obtain an asbestos contractor's certificate from the department and
3 shall have in its employ at least one certified asbestos supervisor who
4 is responsible for supervising all asbestos abatement projects
5 undertaken by the contractor and for assuring compliance with all state
6 laws and (~~regulations~~) rules regarding asbestos. The contractor
7 shall apply for certification renewal every year. The department shall
8 ensure that the expiration of the contractor's registration and the
9 expiration of his or her asbestos contractor's certificate coincide.

10 **Sec. 97.** RCW 49.26.125 and 1989 c 154 s 8 are each amended to read
11 as follows:

12 (1) Prenotification to the department under RCW 49.26.120 (~~shall~~
13 ~~not be~~) is not required for:

14 (~~(1)~~)(a)(i) Any asbestos project involving less than forty-eight
15 square feet of surface area, or less than ten linear feet of pipe
16 unless the surface area of the pipe is greater than forty-eight square
17 feet. The person undertaking (~~such a~~) the project shall keep the
18 reports, or statements, and written descriptions required under RCW
19 49.26.013 and 49.26.120, which shall be available upon request of the
20 department. Employees and employee representatives may request
21 (~~such~~) the reports under RCW 49.26.013(2).

22 (~~(b)~~) (ii) The director may waive the prenotification requirement
23 upon written request of an owner for large-scale, on-going projects.
24 In granting such a waiver, the director shall require the owner to
25 provide prenotification if significant changes in personnel,
26 methodologies, equipment, work site, or work procedures occur or are
27 likely to occur. The director shall further require annual resubmittal
28 of (~~such~~) the notification.

29 (~~(c)~~) (iii) The director, upon review of an owner's reports, work
30 practices, or other data available as a result of inspections, audits,
31 or other authorized activities, may reduce the size threshold for
32 prenotification required by this section. Such a change shall be based
33 on the director's determination that significant problems in personnel,
34 methodologies, equipment, work site, or work procedures are creating
35 the potential for violations of this chapter or asbestos requirements
36 under chapter 49.17 RCW. The new prenotification requirements shall be

1 given in writing to the owner and (~~shall~~) remain in effect until
2 modified or withdrawn in writing by the director.

3 (~~(+2)~~) (b) Emergency projects.

4 (~~(+a)~~) (i) As used in this section, "emergency project" means a
5 project that was not planned and results from a sudden, unexpected
6 event, and does not include operations that are necessitated by
7 nonroutine failure of equipment or systems.

8 (~~(+b)~~) (ii) Emergency projects (~~(which)~~) that disturb or release
9 any material containing asbestos into the air shall be reported to the
10 department within three working days after the commencement of the
11 project in the manner otherwise required under this chapter. A notice
12 shall be clearly posted adjacent to the work site describing the nature
13 of the emergency project. The employees' collective bargaining
14 representatives, or employee representatives, or designated
15 representatives, if any, shall be notified of the emergency as soon as
16 possible by the person undertaking the emergency project.

17 (2) Incremental phasing in the conduct or design of asbestos
18 projects or otherwise designing or conducting asbestos projects of a
19 size less than forty-eight square feet, or other threshold for
20 exemption as provided under this section, with the intent of avoiding
21 prenotification requirements is a violation of this chapter.

22 **Sec. 98.** RCW 49.26.130 and 2003 1st sp.s. c 25 s 924 are each
23 amended to read as follows:

24 (1) The department shall administer this chapter.

25 (2) The director (~~(of the department)~~) shall adopt, in accordance
26 with chapters 34.05 and 49.17 RCW, rules necessary to carry out this
27 chapter.

28 (3) The department shall prescribe fees for the issuance and
29 renewal of certificates, including recertification, and the
30 administration of examinations, and for the review of training courses.

31 (4) The asbestos account is (~~hereby~~) established in the state
32 treasury. All fees collected under this chapter shall be deposited in
33 the account. Moneys in the account shall be spent after appropriation
34 only for costs incurred by the department in the administration and
35 enforcement of this chapter. Disbursements from the account shall be
36 on authorization of the director (~~(of the department)~~) or the
37 director's designee.

1 ~~((5) During the 2003-2005 fiscal biennium, the legislature may~~
2 ~~transfer from the asbestos account to the state general fund such~~
3 ~~amounts as reflect the excess fund balance in the account.))~~

4 **Sec. 99.** RCW 49.28.010 and 2003 c 53 s 274 are each amended to
5 read as follows:

6 (1) ~~((Hereafter))~~ Eight hours in any calendar day ~~((shall))~~
7 constitute a day's work on any work done for the state or any county or
8 municipality within the state, subject to conditions ~~((hereinafter))~~
9 provided in this section.

10 (2) All work done by contract or subcontract on any building or
11 improvements or works on roads, bridges, streets, alleys, or buildings
12 for the state or any county or municipality within the state, shall be
13 done under the provisions of this section. In cases of extraordinary
14 emergency such as danger to life or property, the hours for work may be
15 extended, but in such case the rate of pay for time employed in excess
16 of eight hours of each calendar day, ~~((shall be))~~ is one and one-half
17 times the rate of pay allowed for the same amount of time during eight
18 hours' service. And for this purpose this section is made a part of
19 all contracts, subcontracts, or agreements for work done for the state
20 or any county or municipality within the state.

21 (3) Any contractor, subcontractor, or agent of a contractor or
22 subcontractor, ~~((foreman))~~ foreperson, or employer, who violates this
23 section is guilty of a misdemeanor and shall be fined a sum not less
24 than twenty-five dollars nor more than two hundred dollars, or
25 imprisoned in the county jail for a period of not less than ten days
26 nor more than ninety days, or both such fine and imprisonment, at the
27 discretion of the court.

28 **Sec. 100.** RCW 49.28.040 and 1903 c 44 s 1 are each amended to read
29 as follows:

30 ~~((That))~~ It is a part of the public policy of the state of
31 Washington that all work "by contract or day labor done" for it, or any
32 political subdivision created by its laws, shall be performed in work
33 days of not more than eight hours each, except in cases of
34 extraordinary emergency. No case of extraordinary emergency ~~((shall be~~
35 ~~construed to))~~ exists in any case where other labor can be found to

1 take the place of labor (~~which~~) that has already been employed for
2 eight hours in any calendar day.

3 **Sec. 101.** RCW 49.28.060 and 1903 c 44 s 3 are each amended to read
4 as follows:

5 (~~It is made the duty of~~) All officers or agents authorized to
6 contract for work to be done in behalf of the state of Washington, or
7 any political subdivision created under its laws, (~~to~~) must stipulate
8 in all contracts as provided for in RCW 49.28.040 through 49.28.060(~~, and~~).
9 All such officers and agents, and all officers and agents
10 entrusted with the supervision of work performed under such contracts,
11 (are authorized, and it is made their duty, to declare any contract
12 canceled, the execution of which is not) must cancel any contract that
13 is not executed in accordance with the public policy of this state (~~as~~
14 ~~herein declared~~) described under this chapter.

15 **Sec. 102.** RCW 49.28.065 and 1988 c 121 s 1 are each amended to
16 read as follows:

17 Notwithstanding the provisions of RCW 49.28.010 through 49.28.060,
18 a contractor or subcontractor in any public works contract subject to
19 those provisions may enter into an agreement with his or her employees
20 in which the employees work up to ten hours in a calendar day. No such
21 agreement may provide that the employees work ten-hour days for more
22 than four calendar days a week. Any such agreement is subject to
23 approval by the employees. (~~The overtime provisions of RCW 49.28.020~~
24 ~~shall not apply to the hours, up to forty hours per week, worked~~
25 ~~pursuant to agreements entered into under this section.~~)

26 **Sec. 103.** RCW 49.28.100 and 2003 c 53 s 276 are each amended to
27 read as follows:

28 (1) It (~~shall be~~) is unlawful for any employer to permit any of
29 his or her employees to operate on docks, in warehouses (~~and/or~~), or
30 in or on other waterfront properties any power driven mechanical
31 equipment for the purpose of loading cargo on, or unloading cargo from,
32 ships, barges, or other watercraft, or of assisting in such loading or
33 unloading operations, for a period in excess of twelve and one-half
34 hours at any one time without giving (~~such~~) the person an interval of
35 eight hours' rest(~~:- PROVIDED, HOWEVER, The provisions of this section~~

1 ~~shall not be applicable~~)). However, this section does not apply in
2 cases of emergency, including fire, violent storms, leaking or sinking
3 ships, or services required by the armed forces of the United States.

4 (2) Any person violating this section is guilty of a misdemeanor.

5 **Sec. 104.** RCW 49.28.120 and 1987 c 296 s 1 are each amended to
6 read as follows:

7 (1)(a) Except as provided in subsection (2) of this section, every
8 employer shall arrange employees' working hours on the day of a primary
9 or election, general or special, so that each employee will have a
10 reasonable time up to two hours available for voting during the hours
11 the polls are open as provided by RCW ((29.13.080)) 29A.44.070.

12 (b) If an employee's work schedule does not give the employee two
13 free hours during the time the polls are open, not including meal or
14 rest breaks, the employer shall permit the employee to take a
15 reasonable time up to two hours from the employee's work schedule for
16 voting purposes. In such a case, the employer shall add this time to
17 the time for which the employee is paid.

18 (2) ((The provisions of)) This section ((apply)) applies only if,
19 during the period between the time an employee is informed of his or
20 her work schedule for a primary or election day and the date of the
21 primary or election, there is insufficient time for an absentee ballot
22 to be secured for that primary or election.

23 **Sec. 105.** RCW 49.32.020 and 1933 ex.s. c 7 s 2 are each amended to
24 read as follows:

25 ((In the interpretation of this chapter and in determining the
26 jurisdiction and authority of the courts of the state of Washington, as
27 such jurisdiction and authority are herein defined and limited, the
28 public policy of the state of Washington is hereby declared as follows:

29 WHEREAS,)) The legislature intends that this chapter be interpreted
30 according to the public policy of the state of Washington set forth in
31 this section.

32 Under prevailing economic conditions, developed with the aid of
33 governmental authority for owners of property to organize in the
34 corporate and other forms of ownership association, the individual
35 unorganized worker is commonly helpless to exercise actual liberty of
36 contract and to protect his or her freedom of labor, and thereby to

1 obtain acceptable terms and conditions of employment(~~(, wherefore,~~
2 ~~though he))~~). Though workers should be free to decline to associate
3 with ~~((his))~~ their fellow~~((s))~~ workers, it is necessary that ~~((he))~~
4 they have full freedom of association, self-organization, and
5 designation of representatives of ~~((his))~~ their own choosing(~~(,)~~).
6 Workers must be able to negotiate the terms and conditions of ~~((his))~~
7 their employment, and ~~((that he shall))~~ be free from interference,
8 restraint, or coercion of employers of labor, or their agents, in ~~((the~~
9 ~~designation of such))~~ designating representatives or in self-
10 organization or in other concerted activities for the purpose of
11 collective bargaining or other mutual aid or protections(~~(; therefore,~~
12 ~~the following definitions of, and limitations upon, the jurisdiction~~
13 ~~and authority of the courts of the state of Washington are hereby~~
14 ~~enacted))~~).

15 **Sec. 106.** RCW 49.32.030 and 1933 ex.s. c 7 s 3 are each amended to
16 read as follows:

17 Any undertaking or promise, ~~((such))~~ as ~~((is))~~ described in this
18 section, or any other undertaking or promise in conflict with the
19 public policy declared in RCW 49.32.020, is ~~((hereby declared to be))~~
20 contrary to the public policy of the state of Washington, ~~((shall))~~ not
21 ~~((be))~~ enforceable in any court of the state of Washington, and ~~((shall~~
22 ~~not afford any))~~ may not be the basis for ~~((the))~~ granting ~~((of))~~ legal
23 or equitable relief by any ~~((such))~~ court(~~(, including specifically the~~
24 ~~following;))~~). This includes every undertaking or promise ~~((hereafter))~~
25 made, whether written or oral, express or implied, constituting or
26 contained in any contract or agreement of hiring or employment between
27 any individual, firm, company, association, or corporation and any
28 employee or prospective employee of the same, ~~((whereby—~~

29 ~~(+))~~ when either party to such contract or agreement undertakes or
30 promises:

31 (1) Not to join, become, or remain a member of any labor
32 organization or of any employer organization; or

33 (2) ~~((Either party to such contract or agreement undertakes or~~
34 ~~promises))~~ That he or she will withdraw from an employment relation
35 ~~((in the event that))~~ if he or she joins, becomes, or remains a member
36 of any labor organization or of any employer organization.

1 **Sec. 107.** RCW 49.32.050 and 1933 ex.s. c 7 s 4 are each amended to
2 read as follows:

3 No court of the state of Washington (~~shall have~~) has jurisdiction
4 to issue any restraining order or temporary or permanent injunction in
5 any case involving or growing out of any labor dispute or prohibit any
6 person or persons participating or interested in such dispute (~~as~~
7 ~~these terms are herein defined~~) from doing, whether singly or in
8 concert, any of the following acts:

9 (1) Ceasing or refusing to perform any work or to remain in any
10 relation of employment;

11 (2) Becoming or remaining a member of any labor organization or of
12 any employer organization, regardless of any such undertaking or
13 promise as is described in RCW 49.32.030;

14 (3) Paying or giving to, or withholding from, any person
15 participating or interested in such labor dispute any strike or
16 unemployment benefits or insurance or other money(~~s~~) or things of
17 value;

18 (4) By all lawful means aiding any person participating or
19 interested in any labor dispute who is being proceeded against in, or
20 is prosecuting, any action or suit in any court of the United States or
21 of any state;

22 (5) Giving publicity to the existence of, or the facts involved in,
23 any labor dispute, whether by advertising, speaking, patrolling, or by
24 any other method not involving fraud or violence;

25 (6) Assembling peaceably to act or to organize to act in promotion
26 of their interests in a labor dispute;

27 (7) Advising or notifying any person of an intention to do any of
28 the acts (~~heretofore~~) specified in this section;

29 (8) Agreeing with other persons to do or not to do any of the acts
30 (~~heretofore~~) specified in this section; and

31 (9) Advising, urging, or otherwise causing or inducing without
32 fraud or violence the acts (~~heretofore~~) specified in this section,
33 regardless of any such undertaking or promise as is described in RCW
34 49.32.030.

35 **Sec. 108.** RCW 49.32.090 and 1933 ex.s. c 7 s 11 are each amended
36 to read as follows:

37 In all cases arising under this chapter in which a person (~~shall~~

1 be)) is charged with contempt in a court of the state of Washington,
2 the accused shall enjoy the right to a speedy and public trial by an
3 impartial jury of the county (~~(wherein)~~) in which the contempt (~~(shall~~
4 ~~have been)~~) was committed(~~(:—PROVIDED, That)~~). This right shall not
5 apply to contempts committed in the presence of the court or so near
6 thereto as to interfere directly with the administration of justice or
7 to apply to the misbehavior, misconduct, or disobedience of any officer
8 of the court in respect to the writs, orders, or process of the court.

9 **Sec. 109.** RCW 49.32.110 and 1933 ex.s. c 7 s 13 are each amended
10 to read as follows:

11 (~~When used in this chapter, and for the purpose of this~~
12 ~~chapter—)~~)

13 (1) A case shall be held to involve or to grow out of a labor
14 dispute when the case involves persons who are engaged in the same
15 industry, trade, or occupation; or have direct or indirect interests
16 therein; or who are employees of the same employer; or who are members
17 of the same or an affiliated organization of employers or employees;
18 whether such dispute is (a) between one or more employers or
19 associations of employers and one or more employees or associations of
20 employees; (b) between one or more employers or associations of
21 employers and one or more employers or association of employers; or (c)
22 between one or more employees or association of employees and one or
23 more employees or association of employees; or when the case involves
24 any conflicting or competing interests in a "labor dispute" (~~(as~~
25 ~~hereinafter defined)~~) of "persons participating or interested" therein
26 (~~(as hereinafter defined)~~)).

27 (2) For the purposes of this chapter:

28 (a) A (~~person or association shall be held to be a~~) "person
29 participating or interested" means a person or association involved in
30 a labor dispute (~~(if)~~) in which relief is sought against (~~(him or it)~~)
31 the person or association, and (~~(if he or it)~~) the person or
32 association is engaged in the same industry, trade, craft, or
33 occupation in which the dispute occurs, or has a direct or indirect
34 interest therein or is a member, officer, or agent of any association
35 composed in whole or in part of employers or employees engaged in such
36 industry, trade, craft, or occupation.

1 (~~(3) The term~~) (b) "Labor dispute" includes any controversy
2 concerning terms or conditions of employment, or concerning the
3 association or representation of persons in negotiating, fixing,
4 maintaining, changing, or seeking to arrange terms or conditions of
5 employment, regardless of whether or not the disputants stand in the
6 proximate relation of employer and employee.

7 **Sec. 110.** RCW 49.36.015 and 1919 c 185 s 2 are each amended to
8 read as follows:

9 No restraining order or injunction shall be granted by any court of
10 this state, or any judge or judges thereof in any case between an
11 employer and employee or between an employer and employees or between
12 employees or between persons employed and persons seeking employment
13 involving or growing out of a dispute concerning terms or conditions of
14 employment, unless necessary to prevent irreparable damage to property
15 or to a personal right or to a property right of the party making the
16 application, for which injury there is no adequate remedy at law, and
17 such petition must be in writing describing such damage or injury
18 feared by the applicant, and sworn to by the applicant or his or her
19 agent or attorney. No such restraining order or injunction (~~(shall)~~)
20 prohibits any such person or persons, whether singly or in concert,
21 from terminating any relation of employment or from ceasing to perform
22 any work or labor; or from paying or giving to, or withholding from any
23 person engaged in such dispute, any strike benefits or other money(~~(s)~~)
24 or things of value; or from doing any act or thing (~~(which)~~) that might
25 lawfully be done in the absence of such dispute by any party thereto;
26 nor shall any of the acts specified in this section be considered or
27 held to be illegal or unlawful in any court of the state.

28 **Sec. 111.** RCW 49.38.010 and 1984 c 89 s 1 are each amended to read
29 as follows:

30 (~~(Unless the context clearly requires otherwise,)~~) The definitions
31 in this section apply throughout this chapter unless the context
32 clearly requires otherwise.

- 33 (1) "Department" means the department of labor and industries.
34 (2) "Theatrical enterprise" means the production of any circus,
35 vaudeville, carnival, revue, variety show, musical comedy, operetta,
36 opera, drama, endurance contest, marathon, walkathon, or any other

1 entertainment event where persons are a part of the enterprise's
2 presentation. "Theatrical enterprise" does not include a program of a
3 radio or television station operating pursuant to a license issued by
4 the federal communications commission or any event produced by a
5 nonprofit cultural or artistic organization that has been located in a
6 community for at least two years.

7 **Sec. 112.** RCW 49.40.010 and 1919 c 191 s 1 are each amended to
8 read as follows:

9 For the purposes of this chapter (~~the term~~), "seasonal labor"
10 (~~shall~~) includes all work performed by any person employed for a
11 period of time greater than one month and where the wages for (~~such~~)
12 the work are not to be paid at any fixed interval of time, but at the
13 termination of (~~such~~) employment, and where (~~such~~) the person is
14 hired within this state for work to be performed outside the state and
15 the wages earned during (~~said~~) the employment are to be paid in this
16 state at the termination of (~~such~~) employment(~~PROVIDED, That~~).
17 However, this chapter shall not apply to wages earned by seamen or
18 other persons where the payment of their wages is regulated by federal
19 statutes.

20 **Sec. 113.** RCW 49.40.030 and 1919 c 191 s 3 are each amended to
21 read as follows:

22 Every employee who with intent to defraud (~~shall have~~) has
23 secured advances of money or supplies under a contract for reasonable
24 labor and who with intent to defraud (~~shall~~) willfully fails to
25 perform sufficient labor to compensate for such advances and supplies
26 made under such contract (~~shall be~~) is guilty of a gross misdemeanor.

27 **Sec. 114.** RCW 49.40.040 and 1919 c 191 s 4 are each amended to
28 read as follows:

29 Upon the written petition of either the employer or the employee
30 setting forth in ordinary and concise language the facts and questions
31 in dispute, the director of labor and industries or the director's
32 designee shall(~~, in person or by his duly authorized deputy, and is~~
33 ~~hereby authorized to~~) hear and determine all disputes concerning wages
34 earned at seasonal labor, and allow or reject deductions made from such

1 wages for money(~~s~~) advanced or supplies furnished before the wages
2 are earned for money paid or supplies furnished during the season or
3 for money paid to third persons upon the written order of the employee.

4 **Sec. 115.** RCW 49.40.050 and 1919 c 191 s 5 are each amended to
5 read as follows:

6 Upon the filing of any such petition, the director of labor and
7 industries shall notify the other party to the dispute of the time and
8 place when and where (~~such~~) the petition will be heard, and may set
9 (~~said~~) the petition for a hearing before a regularly appointed deputy
10 at (~~such~~) a place in the state as he (~~shall~~) or she determines is
11 most convenient for the parties, and the director or his or her deputy
12 (~~shall have power and authority to~~) may issue subpoenas to compel the
13 attendance of witnesses and the production of books, papers, and
14 records at (~~such~~) the hearing, and to administer oaths. Obedience to
15 (~~such~~) the subpoenas shall be enforced by the courts of the county
16 where (~~such~~) the hearing is held.

17 **Sec. 116.** RCW 49.40.060 and 1919 c 191 s 6 are each amended to
18 read as follows:

19 The director of labor and industries, or his or her deputy holding
20 the hearing shall, after (~~such~~) the hearing, determine the amount due
21 from the employer to the employee, and shall make findings of fact and
22 an award in accordance therewith, which findings and award shall be
23 filed in the office of the director and a copy thereof served upon the
24 employer and upon the employee by registered mail directed to their
25 last known (~~post-office~~) mailing address.

26 **Sec. 117.** RCW 49.44.010 and 1899 c 23 s 1 are each amended to read
27 as follows:

28 Every person in this state who (~~shall~~) willfully and maliciously,
29 sends or delivers, or makes or causes to be made, for the purpose of
30 being delivered or sent or part with the possession of any paper,
31 letter, or writing, with or without name signed thereto, or signed with
32 a fictitious name, or with any letter, mark, or other designation, or
33 publishes or causes to be published any statement for the purpose of
34 preventing any other person from obtaining employment in this state or
35 elsewhere, and every person who (~~shall~~) willfully and maliciously

1 "blacklists" or causes to be "blacklisted" any person or persons, by
2 writing, printing, or publishing, or causing the same to be done, the
3 name, or mark, or designation representing the name of any person in
4 any paper, pamphlet, circular, or book, together with any statement
5 concerning persons so named, or publishes or causes to be published
6 that any person is a member of any secret organization, for the purpose
7 of preventing ((such)) the person from securing employment, or who
8 ((shall)) willfully and maliciously makes or issues any statement or
9 paper that will tend to influence or prejudice the mind of any employer
10 against the person of ((such)) the person seeking employment, or any
11 person who ((shall—do)) does any of the things mentioned in this
12 section for the purpose of causing the discharge of any person employed
13 by any railroad or other company, corporation, individual, or
14 individuals, shall, on conviction thereof, be adjudged guilty of a
15 misdemeanor and be punished by a fine of not less than one hundred
16 dollars nor more than one thousand dollars, or by imprisonment in the
17 county jail for not less than ninety days nor more than one year, or by
18 both ((such)) a fine and imprisonment.

19 **Sec. 118.** RCW 49.44.020 and 1909 c 249 s 424 are each amended to
20 read as follows:

21 Every person who ((shall)) gives, offers, or promises, directly or
22 indirectly, any compensation, gratuity, or reward to any duly
23 constituted representative of a labor organization, with intent to
24 influence him or her in respect to any of his or her acts, decisions,
25 or other duties as such representative, or to induce him or her to
26 prevent or cause a strike by the employees of any person or
27 corporation, ((shall be)) is guilty of a gross misdemeanor.

28 **Sec. 119.** RCW 49.44.030 and 1909 c 249 s 425 are each amended to
29 read as follows:

30 ((Every person who, being)) A person is guilty of a gross
31 misdemeanor if he or she is the duly constituted representative of a
32 labor organization((, shall)) and asks for or receives, directly or
33 indirectly, any compensation, gratuity, or reward, or any promise
34 thereof, ((upon any agreement or understanding that)) to influence any
35 of his or her acts, decisions, or other duties as such representative,

1 or (~~any act~~) to prevent or cause a strike of the employees of any
2 person or corporation (~~shall be influenced thereby, shall be guilty of~~
3 ~~a gross misdemeanor~~)).

4 **Sec. 120.** RCW 49.44.040 and 1909 c 249 s 371 are each amended to
5 read as follows:

6 Every person who (~~shall~~) obtains employment or appointment to any
7 office or place of trust, by color or aid of any false or forged letter
8 or certificate of recommendation, (~~shall be~~) is guilty of a
9 misdemeanor.

10 **Sec. 121.** RCW 49.44.050 and 1909 c 249 s 372 are each amended to
11 read as follows:

12 Every employment agent or broker who, with intent to influence the
13 action of any person thereby, (~~shall~~) misstates or misrepresents
14 verbally, or in any writing or advertisement, any material matter
15 relating to the demand for labor, the conditions under which any labor
16 or service is to be performed, the duration thereof, or the wages to be
17 paid therefor, (~~shall be~~) is guilty of a misdemeanor.

18 **Sec. 122.** RCW 49.44.060 and 1909 c 249 s 426 are each amended to
19 read as follows:

20 Every person who (~~shall~~) gives, offers, or promises, directly or
21 indirectly, any compensation, gratuity, or reward to any agent,
22 employee, or servant of any person or corporation, with intent to
23 influence his or her action in relation to his or her principal's,
24 employer's, or master's business, (~~shall be~~) is guilty of a gross
25 misdemeanor.

26 **Sec. 123.** RCW 49.44.080 and 1909 c 249 s 281 are each amended to
27 read as follows:

28 Every person who (~~shall~~) willfully and maliciously, either alone
29 or in combination with others, breaks a contract of service or
30 employment, knowing or having reasonable cause to believe that the
31 consequence of his or her so doing will be to endanger human life or to
32 cause grievous bodily injury, or to expose valuable property to
33 destruction or serious injury, (~~shall be~~) is guilty of a misdemeanor.

1 **Sec. 124.** RCW 49.44.090 and 1993 c 510 s 24 are each amended to
2 read as follows:

3 (1) It (~~shall be~~) is an unfair practice:

4 (~~(1)~~) (a) For an employer or licensing agency, because an
5 individual is forty years of age or older, to refuse to hire or employ
6 or license or to bar or to terminate from employment (~~such~~) the
7 individual, or to discriminate against (~~such~~) the individual in
8 promotion, compensation, or in terms, conditions, or privileges of
9 employment(~~PROVIDED, That~~). However, employers or licensing
10 agencies may establish reasonable minimum and/or maximum age limits
11 with respect to candidates for positions of employment, which positions
12 are of such a nature as to require extraordinary physical effort,
13 endurance, condition, or training, subject to the approval of the
14 executive director of the Washington state human rights commission or
15 the director of labor and industries through the division of industrial
16 relations.

17 (~~(2)~~) (b) For any employer, licensing agency, or employment
18 agency to print or circulate or cause to be printed or circulated any
19 statement, advertisement, or publication, or to use any form of
20 application for employment or to make any inquiry in connection with
21 prospective employment, which expresses any limitation, specification,
22 or discrimination respecting individuals forty years of age or older(~~PROVIDED, That nothing herein shall~~). This subsection does not forbid
23 a requirement of disclosure of birth date upon any form of application
24 for employment or by the production of a birth certificate or other
25 sufficient evidence of the applicant's true age after an employee is
26 hired.
27

28 (2) Nothing contained in this section or in RCW 49.60.180 as to age
29 shall be construed to prevent the termination of the employment of any
30 person who is physically unable to perform his or her duties or to
31 affect the retirement policy or system of any employer where (~~such~~)
32 the policy or system is not merely a subterfuge to evade the purposes
33 of this section; nor shall anything in this section or in RCW 49.60.180
34 be deemed to preclude the varying of insurance coverages according to
35 an employee's age; nor shall this section be construed as applying to
36 any state, county, or city law enforcement agencies, or as superseding
37 any law fixing or authorizing the establishment of reasonable minimum
38 or maximum age limits with respect to candidates for certain positions

1 in public employment (~~(which)~~) that are of such a nature as to require
2 extraordinary physical effort, or (~~(which)~~) that for other reasons
3 warrant consideration of age factors.

4 **Sec. 125.** RCW 49.44.100 and 2003 c 53 s 277 are each amended to
5 read as follows:

6 (1) It (~~(shall be)~~) is unlawful for any person, firm, or
7 corporation not directly involved in a labor strike or lockout to
8 recruit and bring into this state from outside this state any person or
9 persons for employment, or to secure or offer to secure for such person
10 or persons any employment, when the purpose of such recruiting,
11 securing, or offering to secure employment is to have such persons take
12 the place in employment of employees in a business owned by a person,
13 firm, or corporation involved in a labor strike or lockout, or to have
14 such persons act as pickets of a business owned by a person, firm, or
15 corporation where a labor strike or lockout exists(~~(:—PROVIDED,~~
16 ~~That)~~). This section (~~(shall)~~) does not apply to activities and
17 services offered by or through the Washington employment security
18 department.

19 (2) Any person violating this section is guilty of a gross
20 misdemeanor.

21 **Sec. 126.** RCW 49.44.140 and 1979 ex.s. c 177 s 2 are each amended
22 to read as follows:

23 (1) A provision in an employment agreement (~~(which)~~) that provides
24 that an employee shall assign or offer to assign any of the employee's
25 rights in an invention to the employer does not apply to an invention
26 for which no equipment, supplies, facilities, or trade secret
27 information of the employer was used and which was developed entirely
28 on the employee's own time, unless (a) the invention relates (i)
29 directly to the business of the employer, or (ii) to the employer's
30 actual or demonstrably anticipated research or development, or (b) the
31 invention results from any work performed by the employee for the
32 employer. Any provision (~~(which)~~) that purports to apply to such an
33 invention is to that extent against the public policy of this state and
34 is to that extent void and unenforceable.

35 (2) An employer shall not require a provision made void and

1 unenforceable by subsection (1) of this section as a condition of
2 employment or continuing employment.

3 (3) If an employment agreement entered into after September 1,
4 1979, contains a provision requiring the employee to assign any of the
5 employee's rights in any invention to the employer, the employer must
6 also, at the time the agreement is made, provide a written notification
7 to the employee that the agreement does not apply to an invention for
8 which no equipment, supplies, facility, or trade secret information of
9 the employer was used and which was developed entirely on the
10 employee's own time, unless (a) the invention relates (i) directly to
11 the business of the employer, or (ii) to the employer's actual or
12 demonstrably anticipated research or development, or (b) the invention
13 results from any work (~~(performed~~ ~~[performed])~~) performed by the
14 employee for the employer.

15 **Sec. 127.** RCW 49.46.020 and 1999 c 1 s 1 are each amended to read
16 as follows:

17 (1) (~~Until January 1, 1999, every employer shall pay to each of~~
18 ~~his or her employees who has reached the age of eighteen years wages at~~
19 ~~a rate of not less than four dollars and ninety cents per hour.~~

20 ~~(2) Beginning January 1, 1999, and until January 1, 2000, every~~
21 ~~employer shall pay to each of his or her employees who has reached the~~
22 ~~age of eighteen years wages at a rate of not less than five dollars and~~
23 ~~seventy cents per hour.~~

24 ~~(3))~~ Beginning January 1, 2000, and until January 1, 2001, every
25 employer shall pay to each of his or her employees who has reached the
26 age of eighteen years wages at a rate of not less than six dollars and
27 fifty cents per hour.

28 ~~((4))~~ (2)(a) Beginning on January 1, 2001, and each following
29 January 1st as set forth under (b) of this subsection, every employer
30 shall pay to each of his or her employees who has reached the age of
31 eighteen years wages at a rate of not less than the amount established
32 under (b) of this subsection.

33 (b) On September 30, 2000, and on each following September 30th,
34 the department of labor and industries shall calculate an adjusted
35 minimum wage rate to maintain employee purchasing power by increasing
36 the current year's minimum wage rate by the rate of inflation. The
37 adjusted minimum wage rate shall be calculated to the nearest cent

1 using the consumer price index for urban wage earners and clerical
2 workers, CPI-W, or a successor index, for the twelve months prior to
3 each September 1st as calculated by the United States department of
4 labor. Each adjusted minimum wage rate calculated under this
5 subsection (~~((4)(b))~~) takes effect on the following January 1st.

6 ~~((5))~~ (3) The director shall by (~~(regulation)~~) rule establish the
7 minimum wage for employees under the age of eighteen years.

8 **Sec. 128.** RCW 49.46.040 and 1959 c 294 s 4 are each amended to
9 read as follows:

10 (1) The director or his or her designated representatives may
11 investigate and gather data regarding the wages, hours, and other
12 conditions and practices of employment in any industry subject to this
13 chapter, and may enter and inspect such places and such records (and
14 make such transcriptions thereof), question such employees, and
15 investigate such facts, conditions, practices, or matters as he (~~(may)~~)
16 or she deems necessary or appropriate to determine whether any person
17 has violated any provision of this chapter, or which may aid in the
18 enforcement of (~~(the provisions of)~~) this chapter.

19 (2) With the consent and cooperation of federal agencies charged
20 with the administration of federal labor laws, the director may, for
21 the purpose of carrying out his or her functions and duties under this
22 chapter, utilize the services of federal agencies and their employees
23 and, notwithstanding any other provision of law, may reimburse (~~(such)~~)
24 the federal agencies and their employees for services rendered for such
25 purposes.

26 (3) Every employer subject to (~~(any provision of)~~) this chapter or
27 of any order issued under this chapter shall make, keep, and preserve
28 (~~(such)~~) the records of the persons employed by him or her and of the
29 wages, hours, and other conditions and practices of employment
30 maintained by him or her, and shall preserve (~~(such)~~) the records for
31 such periods of time, and shall make reports therefrom to the director
32 as he (~~(shall)~~) or she prescribes by (~~(regulation)~~) rule as necessary
33 or appropriate for the enforcement of (~~(the provisions of)~~) this
34 chapter or the (~~(regulations thereunder)~~) rules adopted under this
35 chapter.

36 (4) The director (~~(is authorized to make such regulations)~~) may
37 adopt rules regulating, restricting, or prohibiting industrial homework

1 ((as are necessary or appropriate)) to prevent the circumvention or
2 evasion of and to safeguard the minimum wage rate prescribed in this
3 chapter(~~(, and all existing regulations of the director relating to~~
4 ~~industrial homework are hereby continued in full force and effect))~~).

5 **Sec. 129.** RCW 49.46.060 and 1959 c 294 s 6 are each amended to
6 read as follows:

7 The director, to the extent necessary in order to prevent
8 curtailment of opportunities for employment, shall ~~((by regulations))~~
9 in rule provide for (1) the employment of learners, ~~((of))~~ apprentices,
10 and ~~((of))~~ messengers employed primarily in delivering letters and
11 messages, under special certificates issued pursuant to ~~((regulations))~~
12 rules of the director, at ~~((such))~~ wages lower than the minimum wage
13 applicable under RCW 49.46.020 and subject to such limitations as to
14 time, number, proportion, and length of service as the director
15 ~~((shall))~~ prescribes, and (2) the employment of individuals whose
16 earning capacity is impaired by age or physical or mental deficiency or
17 injury, under special certificates issued by the director, at ~~((such))~~
18 wages lower than the minimum wage applicable under RCW 49.46.020 and
19 for ~~((such))~~ a period as shall be fixed in such certificates.

20 **Sec. 130.** RCW 49.46.070 and 1959 c 294 s 7 are each amended to
21 read as follows:

22 Every employer subject to ~~((any provision of))~~ this chapter or of
23 any ~~((regulation issued))~~ rule adopted under this chapter shall make,
24 and keep in or about the premises ~~((wherein))~~ where any employee is
25 employed, a record of the name, address, and occupation of each of his
26 or her employees, the rate of pay, and the amount paid each pay period
27 to each ~~((such))~~ employee, the hours worked each day and each work week
28 by ~~((such))~~ the employee, and ~~((such))~~ other information ~~((as))~~ the
29 director ~~((shall))~~ prescribes by ~~((regulation as necessary or~~
30 ~~appropriate))~~ rule for the enforcement of ~~((the provisions of))~~ this
31 chapter or of the ~~((regulations thereunder))~~ rules adopted under this
32 chapter. ~~((Such))~~ Records shall be open for inspection or
33 transcription by the director or his or her authorized representative
34 at any reasonable time. Every ~~((such))~~ employer shall furnish to the
35 director or to his or her authorized representative on demand a sworn

1 statement of (~~such~~) the records and information upon forms prescribed
2 or approved by the director.

3 **Sec. 131.** RCW 49.46.080 and 1983 c 3 s 157 are each amended to
4 read as follows:

5 (1) As new (~~regulations~~) rules or changes or modification of
6 previously established (~~regulations~~) rules are proposed, the director
7 shall call a public hearing for the purpose of the consideration and
8 establishment of (~~such—regulations~~) the rules following the
9 procedures used in the (~~promulgation~~) adoption of standards of safety
10 under chapter 49.17 RCW.

11 (2) Any interested party may obtain a review of the director's
12 findings and order in the superior court of the county of the
13 petitioners' residence by filing in such court within sixty days after
14 the date of publication of (~~such—regulation~~) the rule a written
15 petition praying that the (~~regulation~~) rule be modified or set aside.
16 A copy of (~~such~~) the petition shall be served upon the director. The
17 finding of facts, if supported by evidence, shall be conclusive upon
18 the court. The court shall determine whether the (~~regulation~~) rule
19 is in accordance with law. If the court determines that (~~such~~
20 ~~regulation~~) the rule is not in accordance with law, it shall remand
21 the case to the director with directions to modify or revoke (~~such~~
22 ~~regulation~~) the rule. If application is made to the court for leave
23 to adduce additional evidence by any aggrieved party, (~~such~~) the
24 party shall show to the satisfaction of the court that (~~such~~) the
25 additional evidence is material, and that there were reasonable grounds
26 for the failure to adduce (~~such~~) the evidence before the director.
27 If the court finds that (~~such~~) the evidence is material and that
28 reasonable grounds exist for failure of the aggrieved party to adduce
29 (~~such~~) the evidence in prior proceedings, the court may remand the
30 case to the director with directions that (~~such~~) the additional
31 evidence be taken before the director. The director may modify the
32 findings and conclusions, in whole or in part, by reason of (~~such~~)
33 the additional evidence.

34 (3) The judgment and decree of the court (~~shall be~~) is final
35 except that it (~~shall be~~) is subject to review by the supreme court
36 or the court of appeals as in other civil cases.

1 (4) The proceedings under this section shall not, unless
2 specifically ordered by the court, operate as a stay of an
3 administrative ~~((regulation))~~ rule issued under ~~((the provisions of))~~
4 this chapter. The court shall not grant any stay of an administrative
5 ~~((regulation))~~ rule unless the person complaining of ~~((such regulation~~
6 ~~shall))~~ the rule files in the court an undertaking with a surety or
7 sureties satisfactory to the court for the payment to the employees
8 affected by the ~~((regulation))~~ rule, in the event ~~((such regulation))~~
9 the rule is affirmed, of the amount by which the compensation such
10 employees are entitled to receive under the ~~((regulation))~~ rule exceeds
11 the compensation they actually receive while ~~((such))~~ the stay is in
12 effect.

13 **Sec. 132.** RCW 49.46.090 and 1959 c 294 s 9 are each amended to
14 read as follows:

15 (1) Any employer who pays any employee less than wages to which
16 ~~((such))~~ the employee is entitled under or by virtue of this chapter,
17 ~~((shall be))~~ is liable to ~~((such))~~ the employee affected for the full
18 amount of ~~((such))~~ the wage rate, less any amount actually paid to
19 ~~((such))~~ the employee by the employer, and for costs and ~~((such))~~
20 reasonable attorney's fees ~~((as may be))~~ allowed by the court. Any
21 agreement between ~~((such))~~ the employee and the employer to work for
22 less than ~~((such))~~ the wage rate shall be no defense to ~~((such))~~ the
23 action.

24 (2) At the written request of any employee paid less than the wages
25 to which he or she is entitled under or by virtue of this chapter, the
26 director may take an assignment under this chapter or as provided in
27 RCW 49.48.040 of such wage claim in trust for the assigning employee
28 and may bring any legal action necessary to collect ~~((such))~~ the claim,
29 and the employer shall be required to pay the costs and ~~((such))~~
30 reasonable attorney's fees ~~((as may be))~~ allowed by the court.

31 **Sec. 133.** RCW 49.46.100 and 1959 c 294 s 10 are each amended to
32 read as follows:

33 (1) Any employer who hinders or delays the director or his or her
34 authorized representatives in the performance of his or her duties in
35 the enforcement of this chapter, or refuses to admit the director or
36 his or her authorized representatives to any place of employment, or

1 fails to make, keep, and preserve any records as required under (~~the~~
2 ~~provisions of~~) this chapter, or falsifies any such record, or refuses
3 to make any record accessible to the director or his or her authorized
4 representatives upon demand, or refuses to furnish a sworn statement of
5 such record or any other information required for the proper
6 enforcement of this chapter to the director or his or her authorized
7 representatives upon demand, or pays or agrees to pay wages at a rate
8 less than the rate applicable under this chapter, or otherwise violates
9 any provision of this chapter or of any (~~regulation issued~~) rule
10 adopted under this chapter (~~shall be deemed~~) is in violation of this
11 chapter and (~~shall, upon conviction therefor, be~~) is guilty of a
12 gross misdemeanor.

13 (2) Any employer who discharges or in any other manner
14 discriminates against any employee because (~~such~~) the employee has
15 made any complaint to his or her employer, to the director, or (~~his~~)
16 to the director's authorized representatives that (~~he~~) the employee
17 has not been paid wages in accordance with (~~the provisions of~~) this
18 chapter, (~~or~~) that the employer has violated (~~any provision of~~)
19 this chapter, or because (~~such~~) the employee has caused to be
20 instituted or is about to cause to be instituted any proceeding under
21 or related to this chapter, or because (~~such~~) the employee has
22 testified or is about to testify in any such proceeding (~~shall be~~
23 ~~deemed~~) is in violation of this chapter and (~~shall~~), upon conviction
24 therefor, (~~be~~) is guilty of a gross misdemeanor.

25 **Sec. 134.** RCW 49.46.110 and 1959 c 294 s 11 are each amended to
26 read as follows:

27 Nothing in this chapter (~~shall be deemed to~~) interferes with,
28 impedes, or in any way diminishes the right of employees to bargain
29 collectively with their employers through representatives of their own
30 choosing in order to establish wages or other conditions of work in
31 excess of the applicable minimum under (~~the provisions of~~) this
32 chapter.

33 **Sec. 135.** RCW 49.46.130 and 1998 c 239 s 2 are each amended to
34 read as follows:

35 (1) Except as otherwise provided in this section, no employer shall
36 employ any of his or her employees for a work week longer than forty

1 hours unless (~~such~~) the employee receives compensation for his or her
2 employment in excess of the hours above specified at a rate not less
3 than one and one-half times the regular rate at which he or she is
4 employed.

5 (2) This section does not apply to:

6 (a) Any person exempted pursuant to RCW 49.46.010(5). The payment
7 of compensation or provision of compensatory time off in addition to a
8 salary shall not be a factor in determining whether a person is
9 exempted under RCW 49.46.010(5)(c);

10 (b) Employees who request compensating time off in lieu of overtime
11 pay;

12 (c) Any individual employed as a seaman whether or not the seaman
13 is employed on a vessel other than an American vessel;

14 (d) Seasonal employees who are employed at concessions and
15 recreational establishments at agricultural fairs, including those
16 seasonal employees employed by agricultural fairs, within the state
17 provided that the period of employment for any seasonal employee at any
18 or all agricultural fairs does not exceed fourteen working days a year;

19 (e) Any individual employed as a motion picture projectionist if
20 that employee is covered by a contract or collective bargaining
21 agreement which regulates hours of work and overtime pay;

22 (f) An individual employed as a truck or bus driver who is subject
23 to the provisions of the federal motor carrier act (49 U.S.C. Sec. 3101
24 et seq. and 49 U.S.C. Sec. 10101 et seq.), if the compensation system
25 under which the truck or bus driver is paid includes overtime pay,
26 reasonably equivalent to that required by this subsection, for working
27 longer than forty hours per week;

28 (g) Any individual employed (i) on a farm, in the employ of any
29 person, in connection with the cultivation of the soil, or in
30 connection with raising or harvesting any agricultural or horticultural
31 commodity, including raising, shearing, feeding, caring for, training,
32 and management of livestock, bees, poultry, and furbearing animals and
33 wildlife, or in the employ of the owner or tenant or other operator of
34 a farm in connection with the operation, management, conservation,
35 improvement, or maintenance of such farm and its tools and equipment;
36 or (ii) in packing, packaging, grading, storing, or delivering to
37 storage, or to market or to a carrier for transportation to market, any
38 agricultural or horticultural commodity; or (iii) commercial canning,

1 commercial freezing, or any other commercial processing, or with
2 respect to services performed in connection with the cultivation,
3 raising, harvesting, and processing of oysters or in connection with
4 any agricultural or horticultural commodity after its delivery to a
5 terminal market for distribution for consumption;

6 (h) Any industry in which federal law provides for an overtime
7 payment based on a work week other than forty hours. However, the
8 provisions of the federal law regarding overtime payment based on a
9 work week other than forty hours shall nevertheless apply to employees
10 covered by this section without regard to the existence of actual
11 federal jurisdiction over the industrial activity of the particular
12 employer within this state. For the purposes of this subsection,
13 "industry" means a trade, business, industry, or other activity, or
14 branch, or group thereof, in which individuals are gainfully employed
15 (section 3(h) of the fair labor standards act of 1938, as amended
16 (~~((Public Law))~~ P.L. 93-259));

17 (i) Any hours worked by an employee of a carrier by air subject to
18 the provisions of subchapter II of the railway labor act (45 U.S.C.
19 Sec. 181 et seq.), when such hours are voluntarily worked by the
20 employee pursuant to a shift-trading practice under which the employee
21 has the opportunity in the same or in other work weeks to reduce hours
22 worked by voluntarily offering a shift for trade or reassignment.

23 (3) No employer (~~((shall be))~~) is deemed to have violated subsection
24 (1) of this section by employing any employee of a retail or service
25 establishment for a work week in excess of the applicable work week
26 specified in subsection (1) of this section if:

27 (a) The regular rate of pay of the employee is in excess of one and
28 one-half times the minimum hourly rate required under RCW 49.46.020;
29 and

30 (b) More than half of the employee's compensation for a
31 representative period, of not less than one month, represents
32 commissions on goods or services.

33 In determining the proportion of compensation representing
34 commissions, all earnings resulting from the application of a bona fide
35 commission rate is to be deemed commissions on goods or services
36 without regard to whether the computed commissions exceed the draw or
37 guarantee.

1 (4) No employer of commissioned salespeople primarily engaged in
2 the business of selling automobiles, trucks, recreational vessels,
3 recreational vessel trailers, recreational vehicle trailers,
4 recreational campers, manufactured housing, or farm implements to
5 ultimate purchasers shall violate subsection (1) of this section with
6 respect to such commissioned salespeople if the commissioned
7 salespeople are paid the greater of:

8 (a) Compensation at the hourly rate, which may not be less than the
9 rate required under RCW 49.46.020, for each hour worked up to forty
10 hours per week, and compensation of one and one-half times that hourly
11 rate for all hours worked over forty hours in one week; or

12 (b) A straight commission, a salary plus commission, or a salary
13 plus bonus applied to gross salary.

14 (5) No public agency (~~shall be~~) is deemed to have violated
15 subsection (1) of this section with respect to the employment of any
16 employee in fire protection activities or any employee in law
17 enforcement activities (including security personnel in correctional
18 institutions) if: (a) In a work period of twenty-eight consecutive
19 days the employee receives for tours of duty which in the aggregate
20 exceed two hundred forty hours; or (b) in the case of such an employee
21 to whom a work period of at least seven but less than twenty-eight days
22 applies, in his or her work period the employee receives for tours of
23 duty which in the aggregate exceed a number of hours which bears the
24 same ratio to the number of consecutive days in his or her work period
25 as two hundred forty hours bears to twenty-eight days; compensation at
26 a rate not less than one and one-half times the regular rate at which
27 he or she is employed.

28 **Sec. 136.** RCW 49.48.010 and 1971 ex.s. c 55 s 1 are each amended
29 to read as follows:

30 (1) When any employee (~~shall~~) ceases to work for an employer,
31 whether by discharge or by voluntary withdrawal, the wages due (~~him~~)
32 the employee on account of his or her employment shall be paid to
33 (~~him~~) the employee at the end of the established pay period(~~+~~
34 ~~PROVIDED, HOWEVER, That this paragraph shall~~)).

35 (2) Subsection (1) of this section does not apply when workers are
36 engaged in an employment that normally involves working for several
37 employers in the same industry interchangeably, and the several

1 employers or some of them cooperate to establish a plan for the weekly
2 payment of wages at a central place or places and in accordance with a
3 unified schedule of paydays providing for at least one payday each
4 week(~~(; but this subsection shall not apply to any such plan)~~).
5 However, such plan may not take effect until ten days after notice of
6 their intention to set up ~~((such a))~~ the plan ~~((shall have))~~ has been
7 given to the director of labor and industries by the employers who
8 cooperate to establish the plan(~~(; and)~~). Having once been
9 established, no such plan can be abandoned except after notice of their
10 intention to abandon such plan has been given to the director of labor
11 and industries by the employers intending to abandon the plan(~~(;~~
12 ~~PROVIDED FURTHER, That)~~). The duty to pay an employee forthwith shall
13 not apply if the labor-management agreement under which the employee
14 has been employed provides otherwise.

15 (3) It ~~((shall be))~~ is unlawful for any employer to withhold or
16 divert any portion of an employee's wages unless the deduction is:

17 ~~((1))~~ (a) Required by state or federal law; ~~((or~~
18 ~~2))~~ (b) Specifically agreed upon orally or in writing by the
19 employee and employer; or

20 ~~((3))~~ (c) For medical, surgical, or hospital care or service,
21 pursuant to ~~((any))~~ rule ~~((or regulation: PROVIDED, HOWEVER, That))~~ if
22 the deduction is openly, clearly, and in due course recorded in the
23 employer's books and records.

24 ~~((Paragraph three))~~ (4) Subsection (3) of this section ~~((shall not~~
25 ~~be construed to))~~ does not affect the right of any employer or former
26 employer to sue upon or collect any debt owed to ~~((said))~~ the employer
27 or former employer by his or her employees or former employees.

28 **Sec. 137.** RCW 49.48.030 and 1971 ex.s. c 55 s 3 are each amended
29 to read as follows:

30 In any action in which any person is successful in recovering
31 judgment for wages or salary owed to him or her, reasonable attorney's
32 fees, in an amount to be determined by the court, shall be assessed
33 against ~~((said))~~ the employer or former employer(~~(; PROVIDED, HOWEVER,~~
34 ~~That)~~). This section shall not apply if the amount of recovery is less
35 than or equal to the amount admitted by the employer to be owing for
36 ~~((said))~~ the wages or salary.

1 **Sec. 138.** RCW 49.48.060 and 1971 ex.s. c 55 s 4 are each amended
2 to read as follows:

3 (1) If upon investigation by the director of the department of
4 labor and industries, after taking assignments of any wage claim under
5 RCW 49.48.040, it appears to the director that the employer is
6 representing to his or her employees that he or she is able to pay
7 wages for their services and that the employees are not being paid for
8 their services, the director may require the employer to give a bond in
9 such sum as the director deems reasonable and adequate in the
10 circumstances, with sufficient surety, conditioned that the employer
11 will for a definite future period not exceeding six months conduct his
12 or her business and pay his or her employees in accordance with the
13 laws of the state of Washington.

14 (2) If within ten days after demand for (~~such~~) the bond the
15 employer fails to provide the same, the director may commence a suit
16 against the employer in the superior court of appropriate jurisdiction
17 to compel him or her to furnish (~~such~~) the bond or cease doing
18 business until he or she has done so. The employer (~~shall have~~) has
19 the burden of proving the amount (~~thereof~~) of the bond to be
20 excessive.

21 (3) If the court finds that there is just cause for requiring
22 (~~such~~) a bond and that the same is reasonable, necessary, or
23 appropriate to secure the prompt payment of the wages of the employees
24 of (~~such~~) the employer and his or her compliance with RCW 49.48.010
25 through 49.48.080, the court shall enjoin (~~such~~) the employer from
26 doing business in this state until the requirement is met, or shall
27 make other, and may make further, orders appropriate to compel
28 compliance with the requirement.

29 (4) Upon being informed of a wage claim against an employer or
30 former employer, the director shall, if (~~such~~) the claim appears to
31 be just, immediately notify the employer or former employer(~~er~~) of
32 (~~such~~) the claim by mail. If the employer or former employer fails
33 to pay the claim or make satisfactory explanation to the director of
34 his or her failure to do so, within thirty days thereafter, the
35 employer or former employer (~~shall be~~) is liable to a penalty of ten
36 percent of that portion of the claim found to be justly due. The
37 director (~~shall have~~) has a cause of action against the employer or
38 former employer for the recovery of (~~such~~) the penalty, and the same

1 may be included in any subsequent action by the director on (~~said~~)
2 the wage claim, or may be exercised separately after adjustment of
3 (~~such~~) the wage claim without court action.

4 **Sec. 139.** RCW 49.48.070 and 1935 c 96 s 4 are each amended to read
5 as follows:

6 (~~It shall be the duty of~~) The director of labor and industries
7 (~~to~~) must inquire diligently for any violations of RCW 49.48.040
8 through 49.48.080, and (~~to~~) must institute (~~the~~) actions for
9 penalties (~~herein provided,~~) and (~~to~~) enforce generally the
10 provisions of RCW 49.48.040 through 49.48.080.

11 **Sec. 140.** RCW 49.48.150 and 1992 c 177 s 1 are each amended to
12 read as follows:

13 (~~Unless the context clearly requires otherwise,~~) The definitions
14 in this section apply throughout RCW 49.48.160 through 49.48.190 unless
15 the context clearly requires otherwise.

16 (1) "Commission" means compensation paid a sales representative by
17 a principal in an amount based on a percentage of the dollar amount of
18 certain orders for or sales of the principal's product.

19 (2) "Principal" means a person, whether or not the person has a
20 permanent or fixed place of business in this state, who:

21 (a) Manufactures, produces, imports, or distributes a product for
22 sale to customers who purchase the product for resale;

23 (b) Uses a sales representative to solicit orders for the product;
24 and

25 (c) Compensates the sales representative in whole or in part by
26 commission.

27 (3) "Sales representative" means a person who solicits, on behalf
28 of a principal, orders for the purchase at wholesale of the principal's
29 product, but does not include a person who places orders for his or her
30 own account for resale, or purchases for his or her own account for
31 resale, or sells or takes orders for the direct sale of products to the
32 ultimate consumer.

33 **Sec. 141.** RCW 49.48.210 and 2004 c 7 s 2 are each amended to read
34 as follows:

35 (1) Except as provided in subsection (10) of this section, when an

1 employer determines that an employee was overpaid wages, the employer
2 shall provide written notice to the employee. The notice shall include
3 the amount of the overpayment, the basis for the claim, a demand for
4 payment within twenty calendar days of the date on which the employee
5 received the notice, and the rights of the employee under this section.

6 (2) The notice may be served upon the employee in the manner
7 prescribed for the service of a summons in a civil action, or be mailed
8 by certified mail, return receipt requested, to the employee at his or
9 her last known address.

10 (3) Within twenty calendar days after receiving the notice from the
11 employer that an overpayment has occurred, the employee may request, in
12 writing, that the employer review its finding that an overpayment has
13 occurred. The employee may choose to have the review conducted through
14 written submission of information challenging the overpayment or
15 through a face-to-face meeting with the employer. If the request is
16 not made within the twenty-day period as provided in this subsection,
17 the employee may not further challenge the overpayment and has no right
18 to further agency review, an adjudicative proceeding, or judicial
19 review.

20 (4) Upon receipt of an employee's written request for review of the
21 overpayment, the employer shall review the employee's challenge to the
22 overpayment. Upon completion of the review, the employer shall notify
23 the employee in writing of the employer's decision regarding the
24 employee's challenge. The notification must be sent by certified mail,
25 return receipt requested, to the employee at his or her last known
26 address.

27 (5) If the employee is dissatisfied with the employer's decision
28 regarding the employee's challenge to the overpayment, the employee may
29 request an adjudicative proceeding governed by the administrative
30 procedure act, chapter 34.05 RCW or, in the case of a county or city
31 employee, an adjudicative proceeding provided pursuant to ordinance or
32 resolution of the county or city. The employee's application for an
33 adjudicative proceeding must be in writing, state the basis for
34 contesting the overpayment notice, and include a copy of the employer's
35 notice of overpayment. The application must be served on and received
36 by the employer within twenty-eight calendar days of the employee's
37 receipt of the employer's decision following review of the employee's

1 challenge. Notwithstanding RCW 34.05.413(3), agencies may not vary the
2 requirements of this subsection (5) by rule or otherwise. The employee
3 must serve the employer by certified mail, return receipt requested.

4 (6) If the employee does not request an adjudicative proceeding
5 within the twenty-eight-day period, the amount of the overpayment
6 provided in the notice shall be deemed final and the employer may
7 proceed to recoup the overpayment as provided in this section and RCW
8 49.48.200.

9 (7) Where an adjudicative proceeding has been requested, the
10 presiding or reviewing officer shall determine the amount, if any, of
11 the overpayment received by the employee.

12 (8) If the employee fails to attend or participate in the
13 adjudicative proceeding, upon a showing of valid service, the presiding
14 or reviewing officer may enter an administrative order declaring the
15 amount claimed in the notice sent to the employee after the employer's
16 review of the employee's challenge to the overpayment to be assessed
17 against the employee and subject to collection action by the employer
18 as provided in RCW 49.48.200.

19 (9) Failure to make an application for a review by the employer as
20 provided in subsections (3) and (4) of this section or an adjudicative
21 proceeding within twenty-eight calendar days of the date of receiving
22 notice of the employer's decision after review of the overpayment shall
23 result in the establishment of a final debt against the employee in the
24 amount asserted by the employer, which debt shall be collected as
25 provided in RCW 49.48.200.

26 (10) When an employer determines that an employee covered by a
27 collective bargaining agreement was overpaid wages, the employer shall
28 provide written notice to the employee. The notice shall include the
29 amount of the overpayment, the basis for the claim, and the rights of
30 the employee under the collective bargaining agreement. Any dispute
31 relating to the occurrence or amount of the overpayment shall be
32 resolved using the grievance procedures contained in the collective
33 bargaining agreement.

34 (11) As used in this section or RCW (~~(49.48.210-[49.48.200])~~)
35 49.48.200 and 49.48.220:

36 (a) "City" means city or town;

37 (b) "Employer" means the state of Washington or a county or city,
38 and any of its agencies, institutions, boards, or commissions; and

1 (c) "Overpayment" means a payment of wages for a pay period that is
2 greater than the amount earned for a pay period.

3 **Sec. 142.** RCW 49.52.010 and 1975 c 34 s 1 are each amended to read
4 as follows:

5 All money(~~s~~) collected by any employer from his or (~~its~~) her
6 employees and all money to be paid by any employer as his or her
7 contribution for furnishing, either directly, or through contract, or
8 arrangement with a hospital association, corporation, firm, or
9 individual, of medicine, medical or surgical treatment, nursing,
10 hospital service, ambulance service, dental service, burial service, or
11 any or all of the above enumerated services, or any other necessary
12 service, contingent upon sickness, accident, or death, are hereby
13 declared to be a trust fund for the purposes for which the same are
14 collected. The trustees (or their administrator, representative, or
15 agent under direction of the trustees) of such fund are authorized to
16 take such action as is deemed necessary to ensure that the employer
17 contributions are made including, but not limited to filing actions at
18 law, and filing liens against money(~~s~~) due to the employer from the
19 performance of labor or furnishing of materials to which the employees
20 contributed their services. (~~Such trust fund is subject to the~~
21 ~~provisions of chapter 48.52 RCW.~~)

22 **Sec. 143.** RCW 49.52.020 and 1975 c 34 s 2 are each amended to read
23 as follows:

24 In case any employer collecting money(~~s~~) from his or her
25 employees or making contributions to any type of benefit plan for any
26 or all of the purposes specified in RCW 49.52.010, (~~shall~~) enter into
27 a contract or arrangement with any hospital association, corporation,
28 firm, or individual, to furnish any such service to its employees, the
29 association, corporation, firm, or individual contracting to furnish
30 such services, shall have a lien upon such trust fund (~~prior to~~)
31 before all other liens except taxes. The lien hereby created shall
32 attach from the date of the arrangement or contract to furnish such
33 services and may be foreclosed in the manner provided by law for the
34 foreclosure of other liens on personal property.

1 **Sec. 144.** RCW 49.52.030 and 1989 c 12 s 16 are each amended to
2 read as follows:

3 All money(~~s~~) realized by any employer from the employer's
4 employees either by collection or by deduction from the wages or pay of
5 employees intended or to be used for the furnishing to workers engaged
6 in extrahazardous work, their families or dependents, of medical,
7 surgical, or hospital care and treatment, or for nursing, ambulance
8 service, burial, or any or all of the above enumerated services, or any
9 service incidental to or furnished or rendered because of sickness,
10 disease, accident, or death, and all money(~~s~~) owing by any employer
11 therefor, shall be and remain a fund for the purposes for which
12 (~~such~~) the money(~~s-are~~) is intended to be used, and shall not
13 constitute or become any part of the assets of the employer making such
14 collections or deductions(~~:- PROVIDED, HOWEVER, That~~). However, RCW
15 49.52.030 and 49.52.040 shall not apply to money(~~s~~) collected or
16 deducted (~~as aforesaid~~) for, or owing by employers to the state
17 medical aid fund. (~~Such~~) The money(~~s~~) shall be paid over promptly
18 to the physician or surgeon or hospital association or other parties to
19 which (~~such~~) the money(~~s-are~~) is due and for the purposes for which
20 (~~such~~) the collections or deductions were made.

21 **Sec. 145.** RCW 49.52.040 and 1929 c 136 s 2 are each amended to
22 read as follows:

23 If any (~~such~~) employer (~~shall~~) defaults in any (~~such~~) payment
24 to any physician, surgeon, hospital, hospital association, or any other
25 parties to whom any (~~such~~) payment is due, the sum so due may be
26 collected by an action at law in the name of the physician, surgeon,
27 hospital, hospital association, or any other party to whom (~~such~~) the
28 payment is owing, or their assigns and against (~~such~~) the defaulting
29 employer, and in addition to (~~such~~) the action, such claims (~~shall~~)
30 have the same priority and lien rights as granted to the state for
31 claims due the accident and medical aid funds by (~~section 7682 of~~
32 ~~Remington's Compiled Statutes of Washington, 1922 [RCW 51.16.150~~
33 ~~through 51.16.170], and acts amendatory thereto, which~~) RCW 51.16.150
34 through 51.16.170. The priority and lien rights shall be enforced in
35 the same manner and under the same conditions as provided in (~~said~~
36 ~~section 7682 [RCW 51.16.150 through 51.16.170]:~~ ~~PROVIDED, HOWEVER,~~
37 ~~That the said~~) RCW 51.16.150 through 51.16.170. However, the claims

1 for physicians, surgeons, hospitals, and hospital associations and
2 others (~~shall be~~) are secondary and inferior to any claims of the
3 state and to any claims for labor. (~~Such~~) This right of action
4 (~~shall be~~) is in addition to any other right of action or remedy.

5 **Sec. 146.** RCW 49.52.050 and 1941 c 72 s 1 are each amended to read
6 as follows:

7 Any employer or officer, vice principal, or agent of any employer,
8 whether (~~said~~) the employer (~~be~~) is in private business or is an
9 elected public official, who:

10 (1) (~~Shall~~) Collects or receives from any employee a rebate of
11 any part of wages (~~theretofore~~) paid by (~~such~~) the employer to
12 (~~such~~) the employee; (~~or~~)

13 (2) Willfully and with intent to deprive the employee of any part
14 of his or her wages, (~~shall~~) pays any employee a lower wage than the
15 wage (~~such~~) the employer is obligated to pay (~~such~~) the employee by
16 any statute, ordinance, or contract; (~~or~~)

17 (3) (~~Shall~~) Willfully makes or causes another to make any false
18 entry in any employer's books or records purporting to show the payment
19 of more wages to an employee than (~~such~~) the employee received;
20 (~~or~~)

21 (4) Being an employer or a person charged with the duty of keeping
22 any employer's books or records (~~shall~~) willfully fails or causes
23 another to fail to show openly and clearly in due course in such
24 employer's books and records any rebate of or deduction from any
25 employee's wages; or

26 (5) (~~Shall~~) Willfully receives or accepts from any employee any
27 false receipt for wages;

28 (~~Shall be~~) Is guilty of a misdemeanor.

29 **Sec. 147.** RCW 49.52.060 and 1939 c 195 s 2 are each amended to
30 read as follows:

31 The provisions of RCW 49.52.050 (~~shall~~) do not make it unlawful
32 for an employer to withhold or divert any portion of an employee's
33 wages when required or empowered so to do by state or federal law or
34 when a deduction has been expressly authorized in writing in advance by
35 the employee for a lawful purpose accruing to the benefit of (~~such~~)
36 the employee (~~nor shall~~). The provisions of RCW 49.52.050 do not

1 make it unlawful for an employer to withhold deductions for medical,
2 surgical, or hospital care or service, pursuant to any rule or
3 regulation(~~(:—PROVIDED, That)~~). However, the employer must
4 derive(~~(s)~~) no financial benefit from (~~(such)~~) the deduction and the
5 (~~(same)~~) deduction (~~(is)~~) must be openly, clearly, and in due course
6 recorded in the employer's books.

7 **Sec. 148.** RCW 49.52.070 and 1939 c 195 s 3 are each amended to
8 read as follows:

9 Any employer and any officer, vice principal, or agent of any
10 employer who (~~(shall)~~) violates (~~(any of the provisions of subdivisions~~
11 ~~(1) and (2) of)~~) RCW 49.52.050 (1) or (2) (~~(shall be)~~) is liable in a
12 civil action by the aggrieved employee or his or her assignee to
13 judgment for twice the amount of the wages unlawfully rebated or
14 withheld by way of exemplary damages, together with costs of suit and
15 a reasonable sum for attorney's fees(~~(:—PROVIDED, HOWEVER, That)~~).
16 However, the benefits of this section (~~(shall not be)~~) are not
17 available to any employee who has knowingly submitted to such
18 violations.

19 **Sec. 149.** RCW 49.52.080 and 1939 c 195 s 4 are each amended to
20 read as follows:

21 The violations by an employer or any officer, vice principal, or
22 agent of any employer of (~~(any of the provisions of subdivisions (3),~~
23 ~~(4), and (5) of)~~) RCW 49.52.050 (~~(shall)~~) (3) through (5) raise a
24 presumption that any deduction from or underpayment of any employee's
25 wages connected with (~~(such)~~) the violation was willful.

26 **Sec. 150.** RCW 49.52.090 and 1935 c 29 s 1 are each amended to read
27 as follows:

28 Every person, whether as a representative of an awarding or public
29 body or officer, or as a contractor or subcontractor doing public work,
30 or agent or officer thereof, who takes or receives, or conspires with
31 another to take or receive, for his or her own use or the use of any
32 other person acting with him or her, any part or portion of the wages
33 paid to any laborer, (~~(workman)~~) worker, or mechanic, including a piece
34 worker and working subcontractor, in connection with services rendered
35 upon any public work within this state, whether (~~(such)~~) the work is

1 done directly for the state, or public body or officer thereof, or
2 county, city and county, city, town, township, district, or other
3 political subdivision of the (~~said~~) state or for any contractor or
4 subcontractor engaged in (~~such~~) public work for (~~such~~) an awarding
5 or public body or officer, (~~shall be~~) is guilty of a gross
6 misdemeanor.

7 **Sec. 151.** RCW 49.56.010 and Code 1881 s 1972 are each amended to
8 read as follows:

9 In all assignments of property made by any person to trustees or
10 assignees on account of the inability of the person at the time of the
11 assignment to pay his or her debts, or in proceedings in insolvency,
12 the wages of the miners, mechanics, (~~salesmen~~) salespeople, servants,
13 clerks, or laborers employed by such persons to the amount of one
14 hundred dollars, each, and for services rendered within sixty days
15 previously, are preferred claims, and must be paid by such trustees or
16 assignees before any other creditor or creditors of the assignor.

17 **Sec. 152.** RCW 49.56.020 and Code 1881 s 1973 are each amended to
18 read as follows:

19 In case of the death of any employer, the wages of each miner,
20 mechanic, (~~salesman~~) salesperson, clerk, servant, and laborer for
21 services rendered within sixty days next preceding the death of the
22 employer, not exceeding one hundred dollars, rank in priority next
23 after the funeral expenses, expenses of the last sickness, the charges
24 and expenses of administering upon the estate, and the allowance to the
25 widow and infant children, and must be paid before other claims against
26 the estate of the deceased person.

27 **Sec. 153.** RCW 49.56.030 and Code 1881 s 1974 are each amended to
28 read as follows:

29 In cases of executions, attachments, and writs of similar nature
30 issued against any person, except for claims for labor done, any
31 miners, mechanics, (~~salesmen~~) salespeople, servants, clerks, and
32 laborers who have claims against the defendant for labor done, may give
33 notice of their claims and the amount thereof, sworn to by the person
34 making the claim to the creditor and the officer executing either of
35 such writs at any time before the actual sale of property levied on,

1 and unless such claim is disputed by the debtor or a creditor, such
2 officer must pay to (~~such~~) the person out of the proceeds of the
3 sale, the amount each is entitled to receive for services rendered
4 within sixty days next preceding the levy of the writ, not exceeding
5 one hundred dollars. If any or all of the claims so presented and
6 claiming preference under this chapter, are disputed by either the
7 debtor or a creditor, the person presenting the same must commence an
8 action within ten days from the recovery thereof, and must prosecute
9 his or her action with due diligence, or be forever barred from any
10 claim of priority of payment thereof(~~(; and)~~). The officer shall
11 retain possession of so much of the proceeds of the sale as may be
12 necessary to satisfy (~~such~~) the claim, until the determination of
13 such action(~~(; and in case)~~). If judgment be had for the claim or any
14 part thereof, carrying costs, the costs taxable therein shall likewise
15 be a preferred claim with the same rank as the original claim.

16 **Sec. 154.** RCW 49.56.040 and 1967 ex.s. c 86 s 1 are each amended
17 to read as follows:

18 In distraint or insolvency proceedings affecting the assets of an
19 employer, claims for labor, salaries, or wages not to exceed six
20 hundred dollars to each claimant (~~which~~) that have been earned within
21 three months before the date of the distraint or commencement of the
22 proceeding shall be paramount and superior to any claim preferred or
23 presented by an agency of the state(~~(; PROVIDED, That)~~). However,
24 this section (~~shall~~) does not apply to any compensation payable to an
25 employer or to an officer, director, or stockholder of a corporate
26 employer.

27 **Sec. 155.** RCW 49.60.174 and 2003 c 273 s 3 are each amended to
28 read as follows:

29 (1) For the purposes of determining whether an unfair practice
30 under this chapter has occurred, claims of discrimination based on
31 actual or perceived HIV or hepatitis C infection shall be evaluated in
32 the same manner as other claims of discrimination based on sensory,
33 mental, or physical disability; or the use of a trained dog guide or
34 service animal by a (~~disabled~~) person with a disability.

35 (2) Subsection (1) of this section shall not apply to transactions
36 with insurance entities, health service contractors, or health

1 maintenance organizations subject to RCW 49.60.030(1)(e) or 49.60.178
2 to prohibit fair discrimination on the basis of actual HIV or actual
3 hepatitis C infection status when bona fide statistical differences in
4 risk or exposure have been substantiated.

5 (3) For the purposes of this chapter:

6 (a) "HIV" means the human immunodeficiency virus, and includes all
7 HIV and HIV-related viruses which damage the cellular branch of the
8 human immune system and leave the infected person immunodeficient; and

9 (b) "Hepatitis C" means the hepatitis C virus of any genotype.

10 **Sec. 156.** RCW 49.60.178 and 2006 c 4 s 9 are each amended to read
11 as follows:

12 It is an unfair practice for any person whether acting for himself,
13 herself, or another in connection with an insurance transaction or
14 transaction with a health maintenance organization to cancel or fail or
15 refuse to issue or renew insurance or a health maintenance agreement to
16 any person because of sex, marital status, sexual orientation, race,
17 creed, color, national origin, or the presence of any sensory, mental,
18 or physical disability or the use of a trained dog guide or service
19 animal by a ((disabled)) person((~~:-PROVIDED, That~~)) with a disability.
20 However, a practice ((which)) that is not unlawful under RCW 48.30.300,
21 48.44.220, or 48.46.370 does not constitute an unfair practice for the
22 purposes of this section. For the purposes of this section, "insurance
23 transaction" is defined in RCW 48.01.060, "health maintenance
24 agreement" is defined in RCW 48.46.020, and "health maintenance
25 organization" is defined in RCW 48.46.020.

26 The fact that such unfair practice may also be a violation of
27 chapter 48.30, 48.44, or 48.46 RCW does not constitute a defense to an
28 action brought under this section.

29 The insurance commissioner, under RCW 48.30.300, and the human
30 rights commission, under chapter 49.60 RCW, shall have concurrent
31 jurisdiction under this section and shall enter into a working
32 agreement as to procedure to be followed in complaints under this
33 section.

34 **Sec. 157.** RCW 49.60.250 and 1993 c 510 s 23 and 1993 c 69 s 14
35 are each reenacted and amended to read as follows:

36 (1) In case of failure to reach an agreement for the elimination of

1 ((such)) an unfair practice, and upon the entry of findings to that
2 effect, the entire file, including the complaint and any and all
3 findings made, shall be certified to the chairperson of the commission.
4 The chairperson of the commission shall thereupon request the
5 appointment of an administrative law judge under Title 34 RCW to hear
6 the complaint and shall cause to be issued and served in the name of
7 the commission a written notice, together with a copy of the complaint,
8 as the same may have been amended, requiring the respondent to answer
9 the charges of the complaint at a hearing before the administrative law
10 judge, at a time and place to be specified in such notice.

11 (2) The place of any such hearing may be the office of the
12 commission or another place designated by it. The case in support of
13 the complaint shall be presented at the hearing by counsel for the
14 commission(~~(:—PROVIDED, That)~~). The complainant may retain
15 independent counsel and submit testimony and be fully heard. No member
16 or employee of the commission who previously made the investigation or
17 caused the notice to be issued shall participate in the hearing except
18 as a witness, nor shall the member or employee participate in the
19 deliberations of the administrative law judge in such case. Any
20 endeavors or negotiations for conciliation shall not be received in
21 evidence.

22 (3) The respondent shall file a written answer to the complaint and
23 appear at the hearing in person or otherwise, with or without counsel,
24 and submit testimony and be fully heard. The respondent has the right
25 to cross-examine the complainant.

26 (4) The administrative law judge conducting any hearing may permit
27 reasonable amendment to any complaint or answer. Testimony taken at
28 the hearing shall be under oath and recorded.

29 (5) If, upon all the evidence, the administrative law judge finds
30 that the respondent has engaged in any unfair practice, the
31 administrative law judge shall state findings of fact and shall issue
32 and file with the commission and cause to be served on such respondent
33 an order requiring such respondent to cease and desist from such unfair
34 practice and to take such affirmative action, including, ((+))but not
35 limited to((+)) hiring, reinstatement, or upgrading of employees, with
36 or without back pay, an admission or restoration to full membership
37 rights in any respondent organization, or to take ((such)) other action
38 as, in the judgment of the administrative law judge, will effectuate

1 the purposes of this chapter, including action that could be ordered by
2 a court, except that damages for humiliation and mental suffering shall
3 not exceed ten thousand dollars, and including a requirement for report
4 of the matter on compliance. Relief available for violations of RCW
5 49.60.222 through 49.60.224 shall be limited to the relief specified in
6 RCW 49.60.225.

7 (6) If a determination is made that retaliatory action, as defined
8 in RCW 42.40.050, has been taken against a whistleblower, as defined in
9 RCW 42.40.020, the administrative law judge may, in addition to any
10 other remedy, impose a civil penalty upon the retaliator of up to three
11 thousand dollars and issue an order to the state employer to suspend
12 the retaliator for up to thirty days without pay. At a minimum, the
13 administrative law judge shall require that a letter of reprimand be
14 placed in the retaliator's personnel file. All penalties recovered
15 shall be paid into the state treasury and credited to the general fund.

16 (7) The final order of the administrative law judge shall include
17 a notice to the parties of the right to obtain judicial review of the
18 order by appeal in accordance with the provisions of RCW 34.05.510
19 through 34.05.598, and that ((such)) the appeal must be served and
20 filed within thirty days after the service of the order on the parties.

21 (8) If, upon all the evidence, the administrative law judge finds
22 that the respondent has not engaged in any alleged unfair practice, the
23 administrative law judge shall state findings of fact and shall
24 similarly issue and file an order dismissing the complaint.

25 (9) An order dismissing a complaint may include an award of
26 reasonable attorneys' fees in favor of the respondent if the
27 administrative law judge concludes that the complaint was frivolous,
28 unreasonable, or groundless.

29 (10) The commission shall establish rules of practice to govern,
30 expedite, and effectuate the foregoing procedure.

31 **Sec. 158.** RCW 49.60.310 and 1985 c 185 s 26 are each amended to
32 read as follows:

33 Any person who willfully resists, prevents, impedes, or interferes
34 with the commission or any of its members or representatives in the
35 performance of duty under this chapter, or who willfully violates an
36 order of the commission, is guilty of a misdemeanor; but procedure for
37 the review of the order shall not be deemed to be such willful conduct.

1 **Sec. 159.** RCW 49.60.360 and 1994 c 262 s 17 are each amended to
2 read as follows:

3 (1) Every person, firm, partnership, association, trustee, or
4 corporation ((which)) that operates a gasoline service station, or
5 other facility ((which)) that offers gasoline or other motor vehicle
6 fuel for sale to the public from such a facility, shall provide, upon
7 request, refueling service to ((disabled)) drivers who are disabled,
8 unaccompanied by passengers capable of safely providing refueling
9 service, of vehicles ((which)) that display a ((disabled person's))
10 special license plate or placard issued by the department of licensing
11 to a person with a disability. The price charged for the motor vehicle
12 fuel in such a case shall be no greater than that which the facility
13 otherwise would charge the public generally to purchase motor vehicle
14 fuel without refueling service. This section does not require a
15 facility to provide ((disabled)) drivers who are disabled with
16 services, including but not limited to checking oil or cleaning
17 windshields, other than refueling services.

18 (2) This section does not apply to:

19 (a) Exclusive self-service gas stations ((which)) that have
20 remotely controlled gas pumps and ((which)) that never provide pump
21 island service; and

22 (b) Convenience stores ((which)) that sell gasoline, ((which)) that
23 have remotely controlled gas pumps, and ((which)) that never provide
24 pump island service.

25 (3) Any person who, as a responsible managing individual setting
26 service policy of a station or facility or as an employee acting
27 independently against set service policy, acts in violation of this
28 section is guilty of a misdemeanor. This subsection shall be enforced
29 by the prosecuting attorney.

30 (4)(a) The human rights commission shall, upon the filing of a
31 verified written complaint by any person, investigate the actions of
32 any person, firm, partnership, association, trustee, or corporation
33 alleged to have violated this section. The complaint shall be in the
34 form prescribed by the commission. The commission may, upon its own
35 motion, issue complaints and conduct investigations of alleged
36 violations of this section.

37 (b) RCW 49.60.240 through 49.60.280 shall apply to complaints under
38 this section.

1 (5) In addition to those matters referred pursuant to subsection
2 (3) of this section, the prosecuting attorney may investigate and
3 prosecute alleged violations of this section.

4 (6) Any person who intentionally displays a license plate or
5 placard (~~((which))~~) that is invalid, or (~~((which))~~) that was not lawfully
6 issued to that person, for the purpose of obtaining refueling service
7 under subsection (1) of this section (~~((shall be))~~) is subject to a civil
8 fine of one hundred dollars for each (~~((such))~~) violation.

9 (7) A notice setting forth the provisions of this section shall be
10 provided by the department of licensing to every person, firm,
11 partnership, association, trustee, or corporation (~~((which))~~) that
12 operates a gasoline service station, or other facility (~~((which))~~) that
13 offers gasoline or other motor vehicle fuel for sale to the public from
14 such a facility.

15 (8) A notice setting forth the provisions of this section shall be
16 provided by the department of licensing to every person with a
17 disability who is issued a (~~((disabled person's))~~) special license plate
18 or placard.

19 (9) For the purposes of this section, "refueling service" means the
20 service of pumping motor vehicle fuel into the fuel tank of a motor
21 vehicle.

22 (10) Nothing in this section limits or restricts the rights or
23 remedies provided under chapter 49.60 RCW.

24 **Sec. 160.** RCW 49.60.380 and 1997 c 271 s 24 are each amended to
25 read as follows:

26 A county, city, or town shall honor a request by a (~~((blind))~~) person
27 who is blind or hearing impaired (~~((person))~~) not to be charged a fee to
28 license his or her dog guide, or a request by a (~~((physically disabled))~~)
29 person with a physical disability not to be charged a fee to license
30 his or her service animal.

31 **Sec. 161.** RCW 49.64.030 and 1953 c 45 s 1 are each amended to read
32 as follows:

33 Notwithstanding the provisions of RCW 26.16.030, whenever payment
34 or refund is made to an employee, former employee, or his or her
35 beneficiary or estate pursuant to and in full compliance with a written
36 retirement, death, or other employee benefit plan or savings plan,

1 ((such)) the payment or refund shall fully discharge the employer and
2 any trustee or insurance company making ((such)) the payment or refund
3 from all adverse claims thereto unless, before ((such)) the payment or
4 refund is made, the employer or former employer, where the payment is
5 made by the employer or former employer, has received at its principal
6 place of business within this state, written notice by or on behalf of
7 some other person that such other person claims to be entitled to
8 ((such)) the payment or refund or some part thereof, or where a trustee
9 or insurance company is making the payment, ((such)) the notice has
10 been received by the trustee or insurance company at its home office or
11 its principal place of business within this state, and if none,
12 ((such)) the notice may be made on the secretary of state(~~(+PROVIDED,~~
13 ~~HOWEVER, That nothing contained in)~~). This section ((shall)) does not
14 affect any claim or right to any ((such)) payment or refund or part
15 thereof as between all persons other than employer and the trustee or
16 insurance company making ((such)) the payment or refund.

17 **Sec. 162.** RCW 49.64.040 and 1988 c 259 s 1 are each amended to
18 read as follows:

19 (1) Unless the context clearly requires otherwise, in this section
20 "dental care assistance plan" means any plan of dental insurance
21 offered by an insurer as defined by chapter 48.01 RCW and any agreement
22 for dental care benefits entered into or renewed after January 1, 1989,
23 provided by a health care service contractor as defined by chapter
24 48.44 RCW.

25 (2) Each employer, public or private, that offers its employees a
26 dental care assistance plan and each employee benefits fund that offers
27 its members a dental care assistance plan limiting the provider of
28 dental care to designated providers or group of providers, shall make
29 available to and inform its employees or members of the option of
30 enrolling in an alternative dental care assistance plan that permits
31 the employees or members to obtain dental care services from any
32 licensed dental care provider of their choice. The portion of the
33 premium paid by the employer for the limiting plan shall be comparable
34 to, but in no case greater than, the portion of the premium paid by the
35 employer for the other plan. If employees are members of a bona fide
36 bargaining unit covered by a labor-management collective bargaining
37 agreement, the selection of the options required by this section may be

1 specified in the agreement. The provisions of this section are not
2 mandatory if the employees are covered by Taft-Hartley health care
3 trust, except that the labor-management trustees may contract with a
4 dental care assistance plan if a feasibility study determines it is to
5 the advantage of the members(~~(: PROVIDED, That)~~).

6 (3) This section (~~(shall only apply)~~) applies only to employers
7 with greater than twenty-five employees under coverage.

8 **Sec. 163.** RCW 49.66.020 and 1973 2nd ex.s. c 3 s 2 are each
9 amended to read as follows:

10 (~~(As used in this chapter:)~~) The definitions in this section apply
11 throughout this chapter unless the context clearly requires otherwise.

12 (1) "Health care activity" includes any hospital, nursing home,
13 institution, agency, or establishment, exclusive of those operated by
14 the state, its municipalities, or political subdivisions, having for
15 one of its principal purposes the preservation of health or the care of
16 sick, aged, or infirm persons.

17 (2) "Bargaining unit" includes any group of employees of a health
18 care activity having substantially common interests with respect to
19 working conditions. The composition of a bargaining unit may be
20 determined by common consent between an employer and its employees, or,
21 in the event either party (~~(shall apply)~~) applies to the director (~~(of~~
22 ~~labor and industries)~~) for a determination of the composition of a
23 bargaining unit, it shall be determined by the director (~~(of labor and~~
24 ~~industries)~~) or his or her delegated representative. No bargaining
25 unit shall be found appropriate if it includes guards together with
26 other employees.

27 (3) "Employee" includes any registered nurse or licensed practical
28 nurse or service personnel performing services for wages for a health
29 care activity. (~~(The term shall)~~) "Employee" does not apply to a
30 member of a religious order assigned to a health care activity by the
31 order as a part of his or her obligations to it; nor (~~(shall)~~) does it
32 apply to persons performing services in connection with healing by
33 prayer or spiritual means alone in accordance with the tenets and
34 practices of recognized church or religious denominations by adherents
35 thereof; nor (~~(shall)~~) does it apply to supervisors.

36 (4) "Employer" includes any person, agency, corporation, company,

1 or other organization engaged in the operation of a health care
2 activity, whether for profitable or charitable purposes.

3 (5) "Supervisor" means any individual having authority, in the
4 interest of the employer, to hire, transfer, suspend, lay off, recall,
5 promote, discharge, assign, reward, or discipline other employees, or
6 responsibly to direct them, or to adjust their grievances, or
7 effectively to recommend such action, if in connection with the
8 foregoing the exercise of such authority is not of a merely routine or
9 clerical nature, but requires the use of independent judgment.
10 "Supervisor" includes registered nurses only if administrative
11 supervision is his or her primary duty and activity.

12 (6) "Guard" means any individual employed as a guard to enforce
13 against employees and other persons rules to protect property of the
14 employer or to protect the safety of persons on the employer's
15 premises.

16 (7) "Director" means the director of the department of labor and
17 industries.

18 (8) "Department" means the department of labor and industries.

19 **Sec. 164.** RCW 49.66.030 and 1973 2nd ex.s. c 3 s 3 are each
20 amended to read as follows:

21 An employee association shall be deemed the properly designated
22 representative of a bargaining unit when it can show evidence that
23 bargaining rights have been assigned to it by a majority of the
24 employees in the bargaining unit. Should questions arise concerning
25 the representative status of any employee organization claiming to
26 represent a bargaining unit of employees, upon petition by (~~such an~~)
27 the organization, it (~~shall be~~) is the duty of the director, acting
28 by himself or herself or through a designee to investigate and
29 determine the composition of the organization. Any organization found
30 authorized by not less than thirty percent of the employees of a
31 bargaining unit (~~shall be~~) is eligible to apply for an election to
32 determine its rights to represent the unit. If more than one
33 organization (~~shall~~) claims to represent any unit, the director, or
34 (~~his~~) the director's designee, may conduct an election by secret
35 ballot to determine which organization (~~shall be~~) is authorized to
36 represent the unit. In order to be certified as a bargaining
37 representative, an employee organization must receive, in a secret

1 ballot election, votes from a majority of the employees who vote in the
2 election, except that nothing in this section (~~shall~~) prohibits the
3 voluntary recognition of a labor organization as a bargaining
4 representative by an employer upon a showing of reasonable proof of
5 majority. In any election held pursuant to this section, there shall
6 be a choice on the ballot for employees to designate that they do not
7 wish to be represented by any bargaining representative. No
8 representation election shall be directed in any bargaining unit or any
9 subdivision thereof within which, in the preceding twelve-month period,
10 a valid election has been held. Thirty percent of the employees of an
11 employer may file a petition for a secret ballot election to ascertain
12 whether the employee organization (~~which~~) that has been certified or
13 is currently recognized by their employer as their bargaining
14 representative is no longer their bargaining representative.

15 No employee organization shall be certified as the representative
16 of employees in a bargaining unit of guards, if (~~such~~) the
17 organization admits to membership, or is affiliated directly or
18 indirectly with an organization (~~which~~) that admits to membership,
19 employees other than guards. The determination shall be based upon a
20 plurality of votes cast in (~~such~~) the election, and shall remain in
21 effect for a period of not less than one year. In determining
22 appropriate bargaining units, the director shall limit (~~such~~) the
23 units to groups consisting of registered nurses, licensed practical
24 nurses, or service personnel(~~(:—PROVIDED, HOWEVER, That)~~). If a
25 majority of each such classification desires inclusion within a single
26 bargaining unit, they may combine into a single unit.

27 **Sec. 165.** RCW 49.66.040 and 1972 ex.s. c 156 s 4 are each amended
28 to read as follows:

29 It (~~shall be deemed~~) is an unfair labor practice, and unlawful,
30 for any health care activity to:

31 (1) Interfere with, restrain, or coerce employees in any manner in
32 the exercise of their right of self-organization(~~(:—PROVIDED, That)~~).
33 The expressing of any views, argument, or opinion, or the dissemination
34 thereof, whether in written, printed, graphic, or visual form, shall
35 not constitute or be evidence of an unfair labor practice under (~~any~~
36 ~~of the provisions of~~) this chapter, if such expression contains no
37 threat of reprisal or force or promise of benefit;

1 (2) Initiate, create, dominate, contribute to, or interfere with
2 the formation or administration of any employee organization having
3 bargaining as one of its functions;

4 (3) Discriminate in regard to hire, terms, or conditions of
5 employment in order to discourage membership in any employee
6 organization having collective bargaining as one of its functions;

7 (4) Refuse to meet and bargain in good faith with the duly
8 designated representatives of an appropriate bargaining unit of
9 employees; and it (~~shall be~~) is a requirement of good faith
10 bargaining that the parties be willing to reduce to writing, and have
11 their representatives sign, any agreement arrived at through
12 negotiation and discussion.

13 **Sec. 166.** RCW 49.66.050 and 1973 2nd ex.s. c 3 s 4 are each
14 amended to read as follows:

15 It (~~shall be~~) is an unfair labor practice and unlawful, for any
16 employee organization or its agent to:

17 (1) Restrain or coerce (a) employees in the exercise of their right
18 to refrain from self-organization, or (b) an employer in the selection
19 of its representatives for purposes of collective bargaining or the
20 adjustment of grievances;

21 (2) Cause or attempt to cause an employer to discriminate against
22 an employee in violation of (~~subsection (3) of~~) RCW 49.66.040 (3) or
23 to discriminate against an employee with respect to whom membership in
24 (~~such~~) the organization has been denied or terminated on some ground
25 other than his or her failure to tender the periodic dues and
26 initiation fees uniformly required as a condition of acquiring or
27 retaining membership;

28 (3) Refuse to meet and bargain in good faith with an employer,
29 provided it is the duly designated representative of the employer's
30 employees for purposes of collective bargaining;

31 (4) Require of employees covered by a union security agreement the
32 payment, as a condition precedent to becoming a member of (~~such~~) the
33 organization, of a fee in an amount (~~which~~) that the director finds
34 excessive or discriminatory under all the circumstances. In making
35 such a finding, the director shall consider, among other relevant
36 factors, the practices and customs of labor organizations in the

1 particular industry, and the wages currently paid to the employees
2 affected;

3 (5) Cause or attempt to cause an employer to pay or deliver or
4 agree to pay or deliver any money or other thing of value, in the
5 nature of an exaction, for services (~~(which)~~) that are not performed or
6 not to be performed;

7 (6) Enter into any contract or agreement, express or implied,
8 whereby an employer or other person ceases or refrains, or agrees to
9 cease or refrain, from handling, using, selling, transporting, or
10 otherwise dealing in any of the products or services of any other
11 employer or person, or to cease doing business with any other employer
12 or person, and any such contract or agreement (~~(shall be)~~) is
13 unenforceable and void; or

14 (7) Engage in, or induce or encourage any individual employed by
15 any employer or to engage in, an activity prohibited by RCW 49.66.060.

16 **Sec. 167.** RCW 49.66.060 and 1972 ex.s. c 156 s 6 are each amended
17 to read as follows:

18 No employee organization, bargaining representative, person, or
19 employee shall authorize, sanction, engage in, or participate in a
20 strike (including but not limited to a concerted work stoppage of any
21 kind, concerted slowdown, or concerted refusal or failure to report for
22 work or perform work) or picketing against an employer under any
23 circumstances, whether arising out of a recognition dispute, bargaining
24 impasse, or otherwise (~~(: PROVIDED, That nothing in)~~). This section
25 (~~(shall)~~) does not prohibit picketing or other publicity for the sole
26 purpose of truthfully advising the public of the existence of a dispute
27 with the employer, unless an effect of such picketing or other
28 publicity is (~~(+a)~~) (1) to induce any employee of the employer or any
29 other individual, in the course of his or her employment, not to pick
30 up, deliver, or transfer goods, not to enter the employer's premises,
31 or not to perform services; or (~~(+b)~~) (2) to induce (~~(such an)~~) the
32 employee or individual to engage in a strike.

33 **Sec. 168.** RCW 49.66.070 and 1973 2nd ex.s. c 3 s 5 are each
34 amended to read as follows:

35 The director or any employee organization qualified to apply for an
36 election under RCW 49.66.030 (~~(as now or hereafter amended)~~) or any

1 employer may maintain in its name or in the name of its members legal
2 action in any county in which jurisdiction of the employer or employee
3 organization may be obtained, to seek relief from the commission of an
4 unfair labor practice(~~(+PROVIDED, That)~~). Such employer or employee
5 organization exhausts the administrative remedies under rules (~~and~~
6 ~~regulations promulgated~~) adopted by the department (~~(prior to)~~) before
7 seeking such court action.

8 The department is empowered and directed to prevent any unfair
9 labor practice and to issue appropriate remedial orders. Any party
10 aggrieved by any remedial order is entitled to the judicial review
11 thereof in accordance with (~~(the provisions of)~~) chapter 34.05 RCW.

12 **Sec. 169.** RCW 49.66.080 and 1973 2nd ex.s. c 3 s 6 are each
13 amended to read as follows:

14 The director (~~(shall have the power to make such)~~) may adopt rules
15 (~~(and regulations not inconsistent)~~) consistent with this chapter,
16 including the establishment of procedures for the hearing and
17 determination of charges alleging unfair labor practices, and for a
18 determination on application by either party when an impasse has
19 arisen, and as (~~(he shall)~~) the director determines are necessary to
20 effectuate its purpose and to enable him or her to carry out its
21 provisions.

22 **Sec. 170.** RCW 49.66.090 and 2005 c 433 s 44 are each amended to
23 read as follows:

24 (~~(In the event that)~~) If a health care activity and an employees'
25 bargaining unit (~~(shall)~~) reach an impasse, the matters in dispute
26 shall be submitted to a board of arbitration composed of three
27 arbitrators for final and binding resolution. The board shall be
28 selected in the following manner: Within ten days, the employer shall
29 appoint one arbitrator and the employees shall appoint one arbitrator.
30 The two arbitrators (~~(se)~~) selected and named shall within ten days
31 agree upon and select the name of a third arbitrator who shall act as
32 (~~(chairman)~~) chair. If, upon the expiration of the period allowed
33 therefor the arbitrators are unable to agree on the selection of a
34 third arbitrator, (~~(such)~~) the arbitrator shall be appointed at the
35 request of either party in accordance with RCW 7.04A.110, and that
36 person shall act as chair of the arbitration board.

1 **Sec. 171.** RCW 49.66.100 and 1972 ex.s. c 156 s 10 are each amended
2 to read as follows:

3 The arbitration board, acting through its (~~chairman~~) chair, shall
4 call a hearing to be held within ten days after the date of the
5 appointment of the (~~chairman~~) chair. The board shall conduct public
6 or private hearings. Reasonable notice of (~~such~~) the hearings shall
7 be given to the parties who shall appear and be heard either in person
8 or by counsel or other representative. Hearings shall be informal and
9 the rules of evidence prevailing in judicial proceedings shall not be
10 binding. A recording of the proceedings shall be taken. Any oral or
11 documentary evidence and other data deemed relevant by the board may be
12 received in evidence. The board (~~shall have the power to~~) may
13 administer oaths, require the attendance of witnesses, (~~and~~) require
14 the production of such books, papers, contracts, agreements, and
15 documents as may be deemed by the board material to a just
16 determination of the issues in dispute, and (~~to~~) issue subpoenas. If
17 any person refuses to obey such subpoena or refuses to be sworn to
18 testify, or any witness, party, or attorney is guilty of any contempt
19 while in attendance at any hearing held (~~hereunder~~) under this
20 section, the board may invoke the jurisdiction of any superior court
21 and such court (~~shall have~~) has jurisdiction to issue an appropriate
22 order. A failure to obey (~~such~~) the order may be punished by the
23 court as a contempt thereof. The hearing conducted by the arbitrators
24 shall be concluded within twenty days of the time of commencement and,
25 within ten days after conclusion of the hearings, the arbitrator shall
26 make written findings and a written opinion upon the issues presented,
27 a copy of which shall be mailed or otherwise delivered to the
28 employees' negotiating agent or its attorney or other designated
29 representative and to the employer or the employer's attorney or
30 designated representative. The determination of the dispute made by
31 the board (~~shall be~~) is final and binding upon both parties.

32 **Sec. 172.** RCW 49.66.120 and 1975-'76 2nd ex.s. c 34 s 147 are each
33 amended to read as follows:

34 The arbitrator so selected by the parties shall be paid at the
35 daily rate or rates not to exceed the usual or customary rates paid to
36 arbitrators in addition to travel expenses at the rates provided in RCW

1 43.03.050 and 43.03.060 (~~as now existing or hereafter amended~~). Such
2 sums together with all expenses of the hearing shall be borne equally
3 by the parties to the arbitration proceedings.

4 **Sec. 173.** RCW 49.66.900 and 1972 ex.s. c 156 s 13 are each amended
5 to read as follows:

6 If any portion of this chapter, or its application to any
7 particular health care activity or class of health care activity,
8 (~~should be~~) is held invalid, the remainder of the chapter, or its
9 application to other health care activities, or other classes thereof,
10 (~~shall not be~~) is not affected.

11 **Sec. 174.** RCW 49.70.170 and 2004 c 276 s 911 are each amended to
12 read as follows:

13 (1) The worker and community right to know fund is (~~hereby~~)
14 established in the custody of the state treasurer. The department
15 shall deposit all money(~~s~~) received under this chapter in the fund.
16 Money(~~s~~) in the fund may be spent only for the purposes of this
17 chapter following legislative appropriation. Disbursements from the
18 fund shall be on authorization of the director or the director's
19 designee. (~~During the 2003-2005 fiscal biennium, moneys in the fund~~
20 ~~may also be used by the military department for the purpose of~~
21 ~~assisting the state emergency response commission and coordinating~~
22 ~~local emergency planning activities.~~) The fund is subject to the
23 allotment procedure provided under chapter 43.88 RCW.

24 (2) The department shall assess each employer who reported ten
25 thousand four hundred or more worker hours in the prior calendar year
26 an annual fee to provide for the implementation of this chapter. The
27 department shall (~~promulgate~~) adopt rules establishing a fee schedule
28 for all employers who reported ten thousand four hundred or more worker
29 hours in the prior calendar year and are engaged in business operations
30 having a standard industrial classification, as designated in the
31 standard industrial classification manual prepared by the federal
32 office of management and budget, within major group numbers 01 through
33 08 (agriculture and forestry industries), numbers 10 through 14 (mining
34 industries), numbers 15 through 17 (construction industries), numbers
35 20 through 39 (manufacturing industries), numbers 41, 42, and 44
36 through 49 (transportation, communications, electric, gas, and sanitary

1 services), number 75 (automotive repair, services, and garages), number
2 76 (miscellaneous repair services), number 80 (health services), and
3 number 82 (educational services). The department shall establish the
4 annual fee for each employer who reported ten thousand four hundred or
5 more worker hours in the prior calendar year in industries identified
6 by this section, provided that fees assessed shall not be more than two
7 dollars and fifty cents per full-time equivalent employee. The annual
8 fee shall not exceed fifty thousand dollars. The fees shall be
9 collected solely from employers whose industries have been identified
10 by rule under this chapter. The department shall (~~promulgate~~) adopt
11 rules allowing employers who do not have hazardous substances at their
12 workplace to request an exemption from the assessment and shall
13 establish penalties for fraudulent exemption requests. All fees
14 collected by the department (~~pursuant to~~) under this section shall be
15 collected in a cost-efficient manner and shall be deposited in the
16 fund.

17 (3) Records required by this chapter shall at all times be open to
18 the inspection of the director, or (~~his~~) the director's designee
19 including, the traveling auditors, agents or assistants of the
20 department provided for in RCW 51.16.070 and 51.48.040. The
21 information obtained from employer records under (~~the provisions of~~)
22 this section (~~shall be~~) is subject to the same confidentiality
23 requirements as set forth in RCW 51.16.070.

24 (4) An employer may appeal the assessment of the fee or penalties
25 pursuant to the procedures set forth in Title 51 RCW and accompanying
26 rules except that the employer shall not have the right of appeal to
27 superior court as provided in Title 51 RCW. The employer from whom the
28 fee or penalty is demanded or enforced, may however, within thirty days
29 of the board of industrial insurance appeal's final order, pay the fee
30 or penalty under written protest setting forth all the grounds upon
31 which (~~such~~) the fee or penalty is claimed to be unlawful, excessive,
32 or otherwise improper and thereafter bring an action in superior court
33 against the department to recover (~~such~~) the fee or penalty or any
34 portion of the fee or penalty which was paid under protest.

35 (5) Repayment shall be made to the general fund of any money(~~s~~)
36 appropriated by law in order to implement this chapter.

1 **Sec. 175.** RCW 49.70.210 and 1987 c 365 s 1 are each amended to
2 read as follows:

3 (1) It is the intent of the legislature that this chapter shall not
4 apply to products that are generally made available to the
5 noncommercial consumer(~~(--PROVIDED, That)~~) if such "consumer" products
6 used by employees in the workplace are used in substantially the same
7 manner, form, and concentration as they are used by noncommercial
8 consumers, and that the product exposure is not substantially greater
9 to the employee than to the noncommercial consumer during normal and
10 accepted use of that product.

11 (2) The department shall adopt rules in accordance with chapter
12 34.05 RCW to implement this section. This section shall not affect the
13 department's authority to implement and enforce the Washington
14 industrial safety and health act, chapter 49.17 RCW, at least as
15 effectively as the federal occupational safety and health act.

16 **Sec. 176.** RCW 49.74.005 and 1985 c 365 s 7 are each amended to
17 read as follows:

18 Discrimination because of race, creed, color, national origin, age,
19 sex, marital status, or the presence of any sensory, mental, or
20 physical handicap is contrary to the findings of the legislature and
21 public policy. The legislature finds and declares that racial
22 minorities, women, persons in protected age groups, persons with
23 disabilities, Vietnam-era veterans, and (~~disabled~~) veterans who are
24 disabled are underrepresented in Washington state government
25 employment.

26 The purpose of this chapter is to provide for enforcement measures
27 for affirmative action within Washington state government employment
28 and institutions of higher education in order to eliminate such
29 underrepresentation.

30 NEW SECTION. **Sec. 177.** The following acts or parts of acts are
31 each repealed:

32 (1) RCW 49.04.141 (Transportation opportunities--Report) and 2003
33 c 363 s 202;

34 (2) RCW 49.08.060 (Tender on exhaustion of available funds) and
35 1903 c 58 s 6;

1 (3) RCW 49.17.288 (Cholinesterase monitoring--Reports) and 2004 c
2 272 s 2;

3 (4) RCW 49.32.072 (Injunctions--Hearings and findings--Temporary
4 orders--Security) and 1933 ex.s. c 7 s 7;

5 (5) RCW 49.32.073 (Injunctions--Complaints, conditions precedent)
6 and 1933 ex.s. c 7 s 8;

7 (6) RCW 49.32.074 (Injunctions--Findings and order essential) and
8 1933 ex.s. c 7 s 9; and

9 (7) RCW 49.32.910 (General repealer) and 1933 ex.s. c 7 s 15.

--- END ---